

# CRAVATH, SWAINE & MOORE

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RECORDATION NO. 11217  
FILED 1425  
NOV 2-3000

DEC 19 1979 - 1 55 PM  
TELEX  
233663  
D 125547  
WUI 620976

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 11217  
FILED 1425  
DEC 19 1979 - 1 55 PM

INTERSTATE COMMERCE COMMISSION

No. 9-33333  
Date DEC 19 1979  
Fee \$ 100.00

ICC Washington, D. C., December 19, 1979

Ralston Purina Company

Lease Financing Dated as of December 1, 1979  
11-3/8% Conditional Sale Indebtedness Due 1994

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a) and the Commission's rules and regulations thereunder, enclosed for filing and recordation on behalf of Ralston Purina Company are counterparts of the following documents:

1. (a) Conditional Sale Agreement dated as of December 1, 1979, between Trinity Industries, Inc., and Mercantile-Safe Deposit and Trust Company, as Trustee;

(b) Agreement and Assignment dated as of December 1, 1979, between Trinity Industries, Inc., and St. Louis Union Trust Company, as Agent; and

2. (a) Lease of Railroad Equipment dated as of December 1, 1979, between Mercantile-Safe Deposit and Trust Company, as Trustee, and Ralston Purina Company; and

(b) Assignment of Lease and Agreement dated as of December 1, 1979, between Mercantile-Safe Deposit and Trust Company, as Trustee, and St. Louis Union Trust Company, as Agent.

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CRAVATH, N. Y.  
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CRAVATH, LONDON E. C. 2

The names and addresses of the parties to the  
aforementioned Agreements are as follows:

1. Agent-Vendor:

St. Louis Union Trust Company  
510 Locust Street  
St. Louis, Missouri 63101

2. Trustee:

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, Maryland 21203

3. Builder:

Trinity Industries, Inc.  
4001 Irving Boulevard  
Dallas, Texas 75207

4. Lessee:

Ralston Purina Company  
Checkerboard Square  
St. Louis, Missouri 63188.

Please file and record the documents referred to  
above and cross-index them under the names of the Agent-  
Vendor, the Trustee, the Builder and the Lessee.

The equipment covered by the aforementioned  
documents consists of the following:

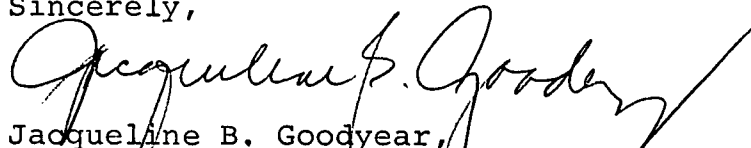
50 100-ton, 4,750 cubic foot truck gravity-  
discharge covered hopper cars, AAR Mechanical  
Designation LO, bearing identifying numbers PLMX  
11186 through PLMX 11235, both inclusive.

Also enclosed is a check for \$100 payable to the  
order of the Interstate Commerce Commission, representing  
the fee for recording the Conditional Sale Agreement and  
related Agreement and Assignment (together constituting  
one document) and the Lease of Railroad Equipment and  
related Assignment of Lease and Agreement (together  
constituting one document).

Please stamp all counterparts of the enclosed documents, retain one copy of the documents for your files and forward the remaining counterparts to me.

Thank you for your assistance.

Sincerely,



Jacqueline B. Goodyear,  
As Agent for Ralston Purina Company

Ms. Agatha L. Mergenovich,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

64A

Interstate Commerce Commission  
Washington, D.C. 20423

12/19/79

OFFICE OF THE SECRETARY

Jacqueline B. Goodyear  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/19/79 at 1:55pm, and assigned recordation number(s).

11217, 11217-A, 11217-B, 11217-C

Sincerely yours,

*Agatha M. Mergenovich*  
Agatha M. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)



11217

RECORDED ..... Filed 1425

DEC 19 1979 2:55 PM

INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 5566-001]

CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1979

between

TRINITY INDUSTRIES, INC.

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation.

11-3/8% Conditional Sale Indebtedness Due 1994  
[Covering 50 4,750 cubic foot Covered Hopper Cars]

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# CONDITIONAL SALE AGREEMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.

CONDITIONAL SALE AGREEMENT dated as of December 1, 1979, between TRINITY INDUSTRIES, INC., a Texas corporation ("Builder" or "Vendor" as the context may require, as set forth in Article 1 hereof), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner").

The Builder has agreed to construct, sell and deliver to the Trustee, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment").

The Trustee is entering into a Lease of Railroad Equipment dated as of the date hereof with RALSTON PURINA COMPANY ("Lessee") substantially in the form of Annex C hereto ("Lease").

ST. LOUIS UNION TRUST COMPANY ("Agent" or "Vendor" as the context may require, as set forth in Article 1 hereof) is acting as agent for THE FRANKLIN LIFE INSURANCE COMPANY ("Original Investor" and, together with its successors and assigns, "Investors") pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, the Agent, the Owner, the Trustee and the Original Investor.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

#### ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Trustee will furnish 42% of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Agent pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between the Builder and the Agent.

1.2 Lease Assignment. As security for the payment and performance of all the Trustee's obligations hereunder, the Trustee will assign to the Agent certain of its rights, title and interest in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment"), and the Lessee shall acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3 Meaning of "Vendor" and "Builder". The term "Vendor", whenever used in this Agreement, means the Builder before any assignment of its rights hereunder and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights retained by such assignor. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

## ARTICLE 2. CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant or plants set forth in Annex B hereto and will sell and deliver the Equipment to the Trustee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Trustee and the Lessee (such specifications and any modifications called "Specifications"). The design, quality and component parts of each unit of Equipment shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to each such unit of Equipment and each such unit will be new railroad equipment when delivered to the Trustee and the original use thereof shall commence with the Trustee.

## ARTICLE 3. INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver

the units of Equipment to the Trustee at the Builder's plant or plants specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of Equipment shall not be made until the filings referred to in Article 19 hereof have been made; and provided further that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or the occurrence of any event of default (as described in Section 16.1 hereof) or of any event which with notice or lapse of time or both would constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Trustee or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) until it receives notice from the Agent and the Trustee that the respective conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

3.2. Force Majeure. The Builder's obligation as to the time of delivery set forth in Annex B is subject to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, accidents, fires, floods, explosions, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Any unit of Equipment not delivered to the Trustee pursuant to Section 3.1 hereof and accepted by the Trustee hereunder and settled for on or before December 31, 1979, shall be excluded from this Agreement, and the Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any unit of Equipment shall be so excluded, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Delivery to and acceptance by or on behalf of the Trustee of any unit so excluded shall be ineffective, ab initio, to impose on the Trustee any liability, obligation or responsibility with respect thereto.

3.4. Inspection. During construction, the Equip-

ment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder will inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of Equipment, such unit or units shall be presented to an authorized inspector of the Trustee for inspection at a place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to the Builder a certificate of acceptance ("Certificate of Acceptance") stating that such unit has been inspected and accepted on behalf of the Trustee and is marked in accordance with Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Section 14.4 hereof. By § 2 of the Lease and by this Section 3.4, the Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit hereunder by the Trustee.

3.5. Builder's Responsibilities After Delivery. Upon delivery to and acceptance by the Trustee of units of Equipment at the place specified for delivery, the Builder shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of any such unit; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Section 14.4 hereof.

#### ARTICLE 4. PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price". The base price per unit of Equipment is set forth in Annex B hereto ("Purchase Price") and shall be set forth in the invoice delivered by the Builder to the Trustee ("Invoice"), without adjustment.

4.2. Settlement and Closing Date. The Equipment shall be settled for one group of units delivered to and accepted by the Trustee. The term "Closing Date" shall be such date occurring not more than 10 business days following presentation of the Invoice and the Certificate or Certifi-

cates of Acceptance by the Builder to the Trustee (but not later than December 31, 1979) as is specified by the Lessee by five days' notice thereof to the Trustee, the Agent and the Builder. The place of each closing shall be determined by mutual agreement among the parties hereto. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, St. Louis, Missouri, or New York, New York, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement and the satisfaction of the conditions set forth in the Participation Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of the aggregate Purchase Price of the Equipment and hereby promises to pay the same in immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on the Closing Date, an amount equal to 42% of the aggregate Purchase Price of the Equipment for which settlement is being made; and

(b) in 179 monthly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Equipment for which settlement is being made less the aggregate amount paid with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Purchase Price payable in installments called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.

(a) The installments of the CSA Indebtedness shall be payable monthly, commencing on February 1, 1980, and payable on the first day in each of the 178 months immediately following such first payment (each such date a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date at the rate of 11-3/8% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on January 1, 1980, and on each payment Date. The amounts of principal of and interest on CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal and interest shall completely amortize the CSA

Indebtedness at maturity. The Trustee will furnish to the Vendor and the Lessee a schedule showing the respective amounts of principal and interest payable on each Payment Date promptly after the Closing Date, in such number of counterparts as shall be requested by the Vendor.

(b) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months, except that interest payable on January 1, 1980, shall be computed on an actual elapsed day, 365-day year, basis.

4.6. Penalty Interest. The Trustee will pay interest, to the extent legally enforceable, at the rate of 12-3/8% per annum ("Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made in immediately available funds in such coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Articles 7 and 16 hereof, the Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

4.8. Liability of Trustee Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 16 and 17 hereof), but not limiting the effect of Article 22 hereof, the liability of the Trustee or any assignee of the Trustee for all payments to be made by it including any liability arising out of or in connection with the performance of its obligations under this Agreement, with the exception only of the payments to be made pursuant to Section 4.3 (a) hereof and the proviso to Section 13.3 hereof, shall not exceed an amount equal to and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. As used herein



the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in § 7 of the Lease) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity paid or payable to the Trustee pursuant to § 6 or 12 of the Lease) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in clauses (a) and (b) of subsection (i) above (not including amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under subparagraph A of § 13.1 of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts

excluded from the Lease Assignment. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this Section, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

#### ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the United States Department of Transportation, the Interstate Commerce Commission, the Association of American Railroads or any other applicable regulatory body shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations Upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee at that time, will (a) execute an instrument

releasing its security interest in the Equipment and transferring such interest to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment and (c) pay to the Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as provided therein. The Trustee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Trustee.

#### ARTICLE 6. TAXES

6.1. General Tax Indemnification. The Trustee agrees to pay and to indemnify and hold the Vendor harmless from all Taxes (as defined in § 6 of the Lease) upon demand by the Vendor; excluding, however, (i) Taxes measured solely by the net income based upon the Vendor's receipt of payments provided for herein (other than payments due the Vendor under this Article 6 for which the Vendor is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement.

6.2. Payments by Vendor. If any Taxes shall have been charged or levied against the Vendor directly and paid by the Vendor, the Trustee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid

by the Vendor shall be secured by and under this Agreement; provided, however, that the Trustee shall not be obligated to reimburse the Vendor for any Taxes so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Trustee shall have approved in writing the payment thereof.

6.3. Survival. All of the obligations of the Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

#### ARTICLE 7. MAINTENANCE; CASUALTY OCCURRENCES

7.1. Maintenance. The Trustee shall, at its own cost and expense, maintain and keep each unit of Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws (as defined in § 10 of the Lease).

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence as defined in § 7 of the Lease or in the event that the Lease is terminated pursuant to § 7.8 thereof (each such event a "Casualty Occurrence"), the Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date or the Termination Date (as each is defined in § 7 of the Lease), as the case may be (each such date a "Casualty Payment Date"), the Trustee shall pay to the Vendor a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date. The Trustee shall file or cause to be filed with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this Section shall be applied on the date of such payment to prepay the CSA Indebtedness, without penalty or premium, ratably in accordance with the unpaid balance of each installment, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Vendor shall promptly cause to be furnished to the Trustee and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as each may request.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this Section 7.3 and Section 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Obligations upon Payment of Casualty Value. Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

#### ARTICLE 8. INSURANCE PROCEEDS; CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall pay such insurance proceeds or condemnation payments to the Trustee, after receipt by the Vendor of the Casualty Value of such unit unless an event of default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that the damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9. REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1981, the Trustee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor, by its agents, shall have the right once in each calendar year (but shall be under no duty) to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto.

## ARTICLE 10. MARKING OF EQUIPMENT

The Trustee will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Trustee in all public offices where this Agreement shall have been filed. Except as aforesaid, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## ARTICLE 11. COMPLIANCE WITH APPLICABLE LAWS

During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 10 of the Lease) and in the event the Applicable Laws require any alteration, replacement or addition of or to any part on any unit of Equipment, the Trustee will or will cause any lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or any lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12. POSSESSION AND USE

12.1. Possession and Use of Equipment by Trustee. So long as an event of default shall not have occurred and be continuing under this Agreement, the Trustee shall be entitled to the possession and use of the Equipment from and after delivery of the Equipment by the Builder to the Trustee, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall, except as provided in § 4.2 of the Lease, be subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

## ARTICLE 13. PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee, the Owner or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to any unit of Equipment or the income and proceeds from the Equipment, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in the Equipment, its interest in said income and proceeds from the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate material-

men's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 22 Except in Certain Instances. The obligations of the Trustee under this Article 13 are subject to the limitations contained in Section 4.8 and Article 22 hereof; provided, however, that the Trustee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Trustee and its successors and assigns and, to the extent it receives funds sufficient for such purpose from the Owner, from, through or under the Owner and its successors and assigns, not arising out of the transactions contemplated hereby (but including taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to any unit of Equipment or the Trustee's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in the Equipment, its interest in the income and proceeds from the Equipment or otherwise under this Agreement.

#### ARTICLE 14. INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay and shall protect, indemnify and hold harmless the Vendor, its successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all Indemnified Matters (as defined in § 12 of the Lease), except that the Trustee shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's warranties or patent indemnities referred to in Section 14.4 hereof. The Trustee shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without



first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Trustee may and, upon such Indemnified Person's request, will, at the Trustee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The Vendor and the Trustee agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full by the Trustee of any indemnity as contained in this Article 14, and provided that no event of default described in Section 16.1 hereof or other event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing, the Trustee shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Matter. Any payments received by such Indemnified Person from the Lessee pursuant to the Lease as a result of any Indemnified Matter shall be paid to the Trustee to the extent necessary to reimburse the Trustee for indemnification payments previously made by the Trustee in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor,

from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Trustee Not Released if Equipment Damaged or Lost. The Trustee will bear the responsibility for and risk of any damage to or destruction or loss of each unit of Equipment delivered and accepted pursuant to Article 3 hereof and shall not be released from its obligations hereunder in any such event.

14.4. Warranties and Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and to patent indemnification are set forth in Items 2 and 3 of Annex A hereto.

The Builder represents and warrants to the Trustee and the Agent and their respective successors and assigns that at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights created by this Agreement, the CSA Assignment and the Lease and that at such time each such unit will be new railroad equipment the original use of which will commence with the Trustee.

The Builder hereby represents and warrants to the Trustee, the Agent and their successors and assigns that this Agreement has been duly authorized by it and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is a legal, valid and binding instrument, enforceable against the Builder in accordance with its terms.

The Builder represents that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

## ARTICLE 15. ASSIGNMENTS

15.1. Assignment by Trustee. The Trustee will not transfer the right to possession of any unit of Equipment (except to the Lessee pursuant to the Lease) or sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor, except as provided in the Trust Agreement.

15.2. Assignment by Vendor. Any or all of the rights, remedies, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve the Builder from any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof, or relieve the Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15 or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Section 15.2 hereof, either the assignor or the assignee shall give written notice to the Trustee and the Lessee stating the identity and address of the assignee, together with a copy of such assignment, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness. The Trustee recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Agent to the entire unpaid CSA Indebt-

edness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder or any other person with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by any person. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against the Builder or such other person, as the case may be.

#### ARTICLE 16. DEFAULTS

##### 16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness.

In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Trustee shall fail to pay or cause to be paid in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) the Trustee (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Trustee) or the Lessee shall, for more than 30 days after the Vendor shall have given notice in writing demanding performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement or of any other agreement contemplated by the Participation Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed,

nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed pursuant to a court order or decree by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(d) any other proceeding shall be commenced by or against the Trustee, the Owner or the Lessee for any relief which includes or might result in any modification of the obligations of the Trustee hereunder, the Owner under the Trust Agreement or the Lessee under the Lease under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee, the Owner or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any Event of Default under the Lease other than an event referred to in § 13.1(A) of the Lease shall have occurred and be continuing; or

(f) an Event of Default under § 13.1(A) of the Lease shall continue for more than six consecutive monthly rental payment dates or shall have occurred on more than 12 such dates during the term of the Lease;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Owner, the Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the Lessee's rights of possession and use under § 4.2 of the Lease, cause the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of their respective covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee wherever situated, subject to the provisions of Articles 4 and 22 hereof. The Trustee shall promptly notify the Vendor of any event of which it has knowledge (which shall mean actual knowledge by an officer in the corporate trust department of the Trustee) which constitutes or with the giving of notice or lapse of time or both would constitute an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, time is of the essence of this Agreement and no such

waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

#### ARTICLE 17. REMEDIES

##### 17.1. Vendor May Take Possession of Equipment.

Subject to the Lessee's rights of possession and use under § 4.2 of the Lease, at any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment, the Trustee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reason-

able interchange point as directed by the Vendor.

During any storage period, the Trustee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having competent jurisdiction the Vendor shall be entitled to a decree of specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of Equipment in any commercially reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor shall elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided, further, that if the Trustee, the Lessee or any other person notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise



dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. Subject to the Lessee's rights of possession and use under § 4.2 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon 30 days notice to the Trustee, the Lessee and any other person to whom the law may require notice of the time and place, may sell the Equipment or one or more units thereof, free from all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be conducted in a commercially reasonable manner. The Vendor, the Trustee and the Lessee may bid for and become

the purchaser of the Equipment or any unit thereof so offered for sale. The Trustee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than 30 days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 15 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Trustee or the Lessee (except to the extent of surplus money received as provided in Section 17.7 hereof) and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except that the Vendor shall not retain the Equipment in satisfaction of the CSA Indebtedness except as provided in Section 17.3 hereof. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall

remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by the Vendor under the remedies herein provided, the Trustee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized by the Vendor, such surplus shall be paid to the Trustee.

17.8. Expenses. The Trustee will pay all reasonable compensation and expenses, including reasonable attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable compensation and expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18. APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or

lease the Equipment or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

#### ARTICLE 19. FILING

The Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Trustee will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

#### ARTICLE 20. HEADINGS; MODIFICATION OF AGREEMENT

All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement and the Exhibits thereto, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Builder, the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Trustee and, if such variation or modification shall adversely affect its interests hereunder, by the Builder. Any reference herein to this Agreement or any other agreement shall mean such agreement and all amendments and supplements hereto or thereto then in effect.

## ARTICLE 21. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telexed or mailed to it by first class mail, postage prepaid, at the following address:

(a) to the Builder, at the address specified in Item 1 of Annex A hereto;

(b) to the Trustee, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(c) to the Lessee, at Checkerboard Square, St. Louis, Missouri 63188, attention of Robert W. Lockwood;

(d) to the Agent, at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department;

(e) to any assignee of the Vendor or of the Trustee, at such address as may have been furnished in writing to the Trustee or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

## ARTICLE 22. IMMUNITIES; SATISFACTION OF UNDERTAKINGS

22.1 No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise; all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

22.2 Satisfaction of Certain Covenants. The obligations of the Trustee under Section 7.1 and under Articles 6, 9, 10, 11, 13 (except as set forth in the proviso in Section 13.3), 14 and 19 hereof shall be deemed satisfied

by the Lessee's execution and delivery of the Lease. The Trustee makes no representation or warranty with regard to the due execution or enforceability of the Lease by or against the Lessee and shall not have any responsibility for the Lessee's failure to perform its obligations under the Lease; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. So long as any CSA Indebtedness remains outstanding, no waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

22.3. No Personal Liability of Trustee. Notwithstanding anything in this Article 22 to the contrary, each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner (except as provided in Section 13.3 hereof) on account of any representation, warranty or agreement herein of the Trustee (except as aforesaid or in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor making claim hereunder may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 22.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that neither the Trustee in its fiduciary or individual capacity nor the Owner shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

22.4. No Amendment to Trust Agreement. The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located and such rights, if any, arising out of the marking of Equipment.

#### ARTICLE 24. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

TRINITY INDUSTRIES, INC.,

[Corporate Seal]

by

E. B. Breeding  
Senior Vice Pres.

Attest:

Richard A. Zyl  
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, not in its individual  
capacity but solely as Trustee,

[Corporate Seal]

by

Attest:

Assistant Vice President

Corporate Trust Officer



STATE OF TEXAS, )  
 ) ss.:  
 COUNTY OF DALLAS,)

On this 17<sup>th</sup> day of December 1979, before me personally appeared C.B. Breeding, to me personally known, who, being by me duly sworn, says that he is Senior Vice President of TRINITY INDUSTRIES, INC., a Texas corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Margaret F. Jones  
 Notary Public

[Notarial Seal]

My Commission expires 11-30-80

STATE OF MARYLAND, )  
 ) ss.:  
 CITY OF BALTIMORE,)

On this            day of            1979, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

## SCHEDULE I

ALLOCATION SCHEDULE OF EACH \$1,000,000 OF CSA  
INDEBTEDNESS PAYABLE IN ONE INTERIM PAYMENT OF  
INTEREST ONLY ON JANUARY 1, 1980, AND 179 MONTHLY  
INSTALLMENTS OF PRINCIPAL AND INTEREST AT A RATE  
OF 11-3/8% PER ANNUM

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
Jan. 1, 1980	-0-	*	*	1,000,000.00
Feb. 1, 1980	11,627.24	9,479.17	2,148.07	997,851.93
Mar. 1, 1980	11,627.24	9,458.80	2,168.44	995,683.49
Apr. 1, 1980	11,627.24	9,438.25	2,188.99	993,494.50
May 1, 1980	11,627.24	9,417.50	2,209.74	991,284.76
June 1, 1980	11,627.24	9,396.55	2,230.69	989,054.07
July 1, 1980	11,627.24	9,375.41	2,231.83	986,802.24
Aug. 1, 1980	11,627.24	9,354.06	2,273.18	984,529.06
Sep. 1, 1980	11,627.24	9,332.51	2,294.73	982,234.33
Oct. 1, 1980	11,627.24	9,310.76	2,316.48	979,917.85
Nov. 1, 1980	11,627.24	9,288.80	2,338.44	977,579.41
Dec. 1, 1980	11,627.24	9,266.64	2,360.60	975,218.81
Jan. 1, 1981	11,627.24	9,244.26	2,382.98	972,835.83
Feb. 1, 1981	11,627.24	9,221.67	2,405.57	970,430.26
Mar. 1, 1981	11,627.24	9,198.87	2,428.37	968,001.89
Apr. 1, 1981	11,627.24	9,175.85	2,451.39	965,550.50
May 1, 1981	11,627.24	9,152.61	2,474.63	963,075.87
June 1, 1981	11,627.24	9,129.16	2,498.08	960,577.79
July 1, 1981	11,627.24	9,105.48	2,521.76	958,056.03
Aug. 1, 1981	11,627.24	9,081.57	2,545.67	955,510.36
Sep. 1, 1981	11,627.24	9,057.44	2,569.80	952,940.56
Oct. 1, 1981	11,627.24	9,033.08	2,594.16	950,346.40
Nov. 1, 1981	11,627.24	9,008.49	2,618.75	947,727.65
Dec. 1, 1981	11,627.24	8,983.67	2,643.57	945,084.08
Jan. 1, 1982	11,627.24	8,958.61	2,668.63	942,415.45
Feb. 1, 1982	11,627.24	8,933.31	2,693.93	939,721.52
Mar. 1, 1982	11,627.24	8,907.78	2,719.46	937,002.06
Apr. 1, 1982	11,627.24	8,882.00	2,745.24	934,256.82
May 1, 1982	11,627.24	8,855.97	2,771.27	931,485.55
June 1, 1982	11,627.24	8,829.71	2,797.53	928,688.02

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\* Interest accrued only.

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
July 1, 1982	11,627.24	8,803.19	2,824.05	925,863.97
Aug. 1, 1982	11,627.24	8,776.42	2,850.82	923,013.15
Sep. 1, 1982	11,627.24	8,749.39	2,877.85	920,135.30
Oct. 1, 1982	11,627.24	8,722.11	2,905.13	917,230.17
Nov. 1, 1982	11,627.24	8,694.58	2,932.66	914,297.51
Dec. 1, 1982	11,627.24	8,666.78	2,960.46	911,337.05
Jan. 1, 1983	11,627.24	8,638.71	2,988.53	908,348.52
Feb. 1, 1983	11,627.24	8,610.39	3,016.85	905,331.67
Mar. 1, 1983	11,627.24	8,581.79	3,045.45	902,286.22
Apr. 1, 1983	11,627.24	8,552.92	3,074.32	899,211.90
May 1, 1983	11,627.24	8,523.78	3,103.46	896,108.44
June 1, 1983	11,627.24	8,494.36	3,132.88	892,975.56
July 1, 1983	11,627.24	8,464.66	3,162.58	889,812.98
Aug. 1, 1983	11,627.24	8,434.68	3,192.56	886,620.42
Sep. 1, 1983	11,627.24	8,404.42	3,222.82	883,397.60
Oct. 1, 1983	11,627.24	8,373.87	3,253.37	880,144.23
Nov. 1, 1983	11,627.24	8,343.03	3,284.21	876,860.02
Dec. 1, 1983	11,627.24	8,311.90	3,315.34	873,544.68
Jan. 1, 1984	11,627.24	8,280.47	3,346.77	870,197.91
Feb. 1, 1984	11,627.24	8,248.75	3,378.49	866,819.42
Mar. 1, 1984	11,627.24	8,216.72	3,410.52	863,408.90
Apr. 1, 1984	11,627.24	8,184.40	3,442.84	859,966.06
May 1, 1984	11,627.24	8,151.76	3,475.48	856,490.58
June 1, 1984	11,627.24	8,118.82	3,508.42	852,982.16
July 1, 1984	11,627.24	8,085.56	3,541.68	849,440.48
Aug. 1, 1984	11,627.24	8,051.99	3,575.25	845,865.23
Sep. 1, 1984	11,627.24	8,018.10	3,609.14	842,256.09
Oct. 1, 1984	11,627.24	7,983.88	3,643.36	838,612.73
Nov. 1, 1984	11,627.24	7,949.35	3,677.89	834,934.84
Dec. 1, 1984	11,627.24	7,914.49	3,712.75	831,222.09
Jan. 1, 1985	11,627.24	7,879.29	3,747.95	827,474.14
Feb. 1, 1985	11,627.24	7,843.76	3,783.48	823,690.66
Mar. 1, 1985	11,627.24	7,807.90	3,819.34	819,871.32
Apr. 1, 1985	11,627.24	7,771.70	3,855.54	816,015.78
May 1, 1985	11,627.24	7,735.15	3,892.09	812,123.69
June 1, 1985	11,627.24	7,698.25	3,928.99	808,194.70
July 1, 1985	11,627.24	7,661.01	3,966.23	804,228.47
Aug. 1, 1985	11,627.24	7,623.41	4,003.83	800,224.64
Sep. 1, 1985	11,627.24	7,585.46	4,041.78	796,182.86
Oct. 1, 1985	11,627.24	7,547.15	4,080.09	792,102.77
Nov. 1, 1985	11,627.24	7,508.47	4,118.77	787,984.00
Dec. 1, 1985	11,627.24	7,469.43	4,157.81	783,826.19

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
Jan. 1, 1986	11,627.24	7,430.02	4,197.22	779,628.97
Feb. 1, 1986	11,627.24	7,390.23	4,237.01	775,391.96
Mar. 1, 1986	11,627.24	7,350.07	4,277.17	771,114.79
Apr. 1, 1986	11,627.24	7,309.52	4,317.72	766,797.07
May 1, 1986	11,627.24	7,268.60	4,358.64	762,438.43
June 1, 1986	11,627.24	7,227.28	4,399.96	758,038.47
July 1, 1986	11,627.24	7,185.57	4,441.67	753,596.80
Aug. 1, 1986	11,627.24	7,143.47	4,483.77	749,113.03
Sep. 1, 1986	11,627.24	7,100.97	4,526.27	744,586.76
Oct. 1, 1986	11,627.24	7,058.06	4,569.18	740,017.58
Nov. 1, 1986	11,627.24	7,014.75	4,612.49	735,405.09
Dec. 1, 1986	11,627.24	6,971.03	4,656.21	730,748.88
Jan. 1, 1987	11,627.24	6,926.89	4,700.35	726,048.53
Feb. 1, 1987	11,627.24	6,882.33	4,744.91	721,303.62
Mar. 1, 1987	11,627.24	6,837.36	4,789.88	716,513.74
Apr. 1, 1987	11,627.24	6,791.95	4,835.29	711,678.45
May 1, 1987	11,627.24	6,746.12	4,881.12	706,797.33
June 1, 1987	11,627.24	6,699.85	4,927.39	701,869.94
July 1, 1987	11,627.24	6,653.14	4,974.10	696,895.84
Aug. 1, 1987	11,627.24	6,605.99	5,021.25	691,874.59
Sep. 1, 1987	11,627.24	6,558.39	5,068.85	686,805.74
Oct. 1, 1987	11,627.24	6,510.34	5,116.90	681,688.84
Nov. 1, 1987	11,627.24	6,461.84	5,165.40	676,523.44
Dec. 1, 1987	11,627.24	6,412.88	5,214.36	671,309.08
Jan. 1, 1988	11,627.24	6,363.45	5,263.79	666,045.29
Feb. 1, 1988	11,627.24	6,313.55	5,313.69	660,731.60
Mar. 1, 1988	11,627.24	6,263.18	5,364.06	655,367.54
Apr. 1, 1988	11,627.24	6,212.34	5,414.90	649,952.64
May 1, 1988	11,627.24	6,161.01	5,466.23	644,486.41
June 1, 1988	11,627.24	6,109.19	5,518.05	638,968.36
July 1, 1988	11,627.24	6,056.89	5,570.35	633,398.01
Aug. 1, 1988	11,627.24	6,004.08	5,623.16	627,774.85
Sep. 1, 1988	11,627.24	5,950.78	5,676.46	622,098.39
Oct. 1, 1988	11,627.24	5,896.97	5,730.27	616,368.12
Nov. 1, 1988	11,627.24	5,842.66	5,784.58	610,583.54
Dec. 1, 1988	11,627.24	5,787.82	5,839.42	604,744.12
Jan. 1, 1989	11,627.24	5,732.47	5,894.77	598,849.35
Feb. 1, 1989	11,627.24	5,676.59	5,950.65	592,898.70
Mar. 1, 1989	11,627.24	5,620.18	6,007.06	586,891.64
Apr. 1, 1989	11,627.24	5,563.24	6,064.00	580,827.64
May 1, 1989	11,627.24	5,505.76	6,121.48	574,706.16
June 1, 1989	11,627.24	5,447.73	6,179.51	568,526.65

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
July 1, 1989	11,627.24	5,389.16	6,238.08	562,288.57
Aug. 1, 1989	11,627.24	5,330.03	6,297.21	555,991.36
Sep. 1, 1989	11,627.24	5,270.33	6,356.91	549,634.45
Oct. 1, 1989	11,627.24	5,210.08	6,417.16	543,217.29
Nov. 1, 1989	11,627.24	5,149.25	6,477.99	536,739.30
Dec. 1, 1989	11,627.24	5,087.84	6,539.40	530,199.90
Jan. 1, 1990	11,627.24	5,025.85	6,601.39	523,598.51
Feb. 1, 1990	11,627.24	4,963.28	6,663.96	516,934.55
Mar. 1, 1990	11,627.24	4,900.11	6,727.13	510,207.42
Apr. 1, 1990	11,627.24	4,836.34	6,790.90	503,416.52
May 1, 1990	11,627.24	4,771.97	6,855.27	496,561.25
June 1, 1990	11,627.24	4,706.99	6,920.25	489,641.00
July 1, 1990	11,627.24	4,641.39	6,985.85	482,655.15
Aug. 1, 1990	11,627.24	4,575.17	7,052.07	475,603.08
Sep. 1, 1990	11,627.24	4,508.32	7,118.92	468,484.16
Oct. 1, 1990	11,627.24	4,440.84	7,186.40	461,297.76
Nov. 1, 1990	11,627.24	4,372.72	7,254.52	454,043.24
Dec. 1, 1990	11,627.24	4,303.95	7,323.29	446,719.95
Jan. 1, 1991	11,627.24	4,234.53	7,392.71	439,327.24
Feb. 1, 1991	11,627.24	4,164.46	7,462.78	431,864.46
Mar. 1, 1991	11,627.24	4,093.71	7,533.53	424,330.93
Apr. 1, 1991	11,627.24	4,022.30	7,604.94	416,725.99
May 1, 1991	11,627.24	3,950.21	7,677.03	409,048.96
June 1, 1991	11,627.24	3,877.44	7,749.80	401,299.16
July 1, 1991	11,627.24	3,803.98	7,823.26	393,475.90
Aug. 1, 1991	11,627.24	3,729.82	7,897.42	385,578.48
Sep. 1, 1991	11,627.24	3,654.96	7,972.28	377,606.20
Oct. 1, 1991	11,627.24	3,579.39	8,047.85	369,558.35
Nov. 1, 1991	11,627.24	3,503.10	8,124.14	361,434.21
Dec. 1, 1991	11,627.24	3,426.09	8,201.15	353,233.06
Jan. 1, 1992	11,627.24	3,348.35	8,278.89	344,954.17
Feb. 1, 1992	11,627.24	3,269.88	8,357.36	336,596.81
Mar. 1, 1992	11,627.24	3,190.66	8,436.58	329,160.23
Apr. 1, 1992	11,627.24	3,110.68	8,516.56	319,643.67
May 1, 1992	11,627.24	3,029.96	8,597.28	311,046.39
June 1, 1992	11,627.24	2,948.46	8,678.78	302,367.61
July 1, 1992	11,627.24	2,866.19	8,761.05	293,606.56
Aug. 1, 1992	11,627.24	2,783.15	8,844.09	284,762.47
Sep. 1, 1992	11,627.24	2,699.31	8,927.93	275,834.54
Oct. 1, 1992	11,627.24	2,614.68	9,012.56	266,821.98
Nov. 1, 1992	11,627.24	2,529.25	9,097.99	257,723.99
Dec. 1, 1992	11,627.24	2,443.01	9,184.23	248,539.76

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
Jan. 1, 1993	11,627.24	2,355.95	9,271.29	239,268.47
Feb. 1, 1993	11,627.24	2,268.07	9,359.17	229,909.30
Mar. 1, 1993	11,627.24	2,179.35	9,447.89	220,461.41
Apr. 1, 1993	11,627.24	2,089.79	9,537.45	210,923.96
May 1, 1993	11,627.24	1,999.38	9,627.86	201,296.10
June 1, 1993	11,627.24	1,908.12	9,719.12	191,576.98
July 1, 1993	11,627.24	1,815.99	9,811.25	181,765.73
Aug. 1, 1993	11,627.24	1,722.99	9,904.25	171,861.48
Sep. 1, 1993	11,627.24	1,629.10	9,998.14	161,863.34
Oct. 1, 1993	11,627.24	1,534.33	10,092.91	151,770.43
Nov. 1, 1993	11,627.24	1,438.66	10,188.58	141,581.85
Dec. 1, 1993	11,627.24	1,342.08	10,285.16	131,296.69
Jan. 1, 1994	11,627.24	1,244.58	10,382.66	120,914.03
Feb. 1, 1994	11,627.24	1,146.16	10,481.08	110,432.95
Mar. 1, 1994	11,627.24	1,046.81	10,580.43	99,852.52
Apr. 1, 1994	11,627.24	946.52	10,680.72	89,171.80
May 1, 1994	11,627.24	845.27	10,781.97	78,389.83
June 1, 1994	11,627.24	743.07	10,884.17	67,505.66
July 1, 1994	11,627.24	639.90	10,987.34	56,518.32
Aug. 1, 1994	11,627.24	535.75	11,091.49	45,426.83
Sep. 1, 1994	11,627.24	430.61	11,196.63	34,230.20
Oct. 1, 1994	11,627.24	324.47	11,302.77	22,927.43
Nov. 1, 1994	11,627.24	217.33	11,409.91	11,517.52
Dec. 1, 1994	11,626.70	109.18	11,517.52	.00

ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

Information Relating to Building of Equipment

- Item 1: TRINITY INDUSTRIES, INC., a Texas corporation, having its address at 4001 Irving Road, Dallas, Texas 75207.
- Item 2: The Builder warrants to the Trustee for a period of one year from the date of shipment f.o.b. plant of manufacture that the units of the Equipment are free of defects in material and workmanship.

THE BUILDER SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR ANY FURTHER LOSS BY REASON OF ANY DEFECT.

This warranty does not cover or apply to any product, accessory, part or attachment which is not manufactured by the Builder.

If the Trustee believes any part of the Equipment to be defective in material or workmanship, the Trustee must give written notice thereof to the Builder at its address specified in this Agreement prior to the expiration of the initial warranty period, specifying details as to date and place of purchase, car number, and alleged defect. The Builder will then give written instructions to the Trustee as to how any defect is to be repaired or replaced. Subject to compliance by the Trustee with the foregoing requirements and provided that the Builder determines the alleged defect to be the result of faulty material or workmanship, the Builder, without charge, will repair any defect in material or workmanship within 120 days after the defective part or Equipment is received by the Builder at the factory from which it was shipped or at such other location specified in writing by the Builder.

THE ABOVE EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE) AND ALL WARRANTIES,

EXPRESS OR IMPLIED (EXCEPT AS TO TITLE), ARE LIMITED TO ONE YEAR IN DURATION AS SPECIFICALLY PROVIDED ABOVE.

- Item 3: The Builder shall defend any suit or proceedings brought against the Trustee or the Lessee based on a claim that the Equipment or any part thereof furnished hereunder constitutes an infringement of any United States patent, if notified promptly in writing and given authority, information and assistance (at the expense of the Builder) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Trustee or the Lessee. In case the Equipment or any part thereof is in such suit held to constitute infringement and the use of said Equipment or parts is enjoined, the Builder shall, at its own expense, and at its option, either procure for the Trustee and the Lessee the right to continue using said Equipment or parts, or replace same with noninfringing equipment or modify it so it becomes noninfringing, or refund the purchase price. The foregoing states the entire liability of the Builder for patent infringement by the Equipment or any part thereof.



ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plants</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100 ton 4,750 cubic foot truck gravity- discharge covered hopper cars	LO	As pro- vided in Purchase Order	Oklahoma City, Okla- homa; Long- view, Texas	50	PLMX 11186- PLMX 11235	\$44,695	\$2,234,750	December 1979 F.O.B. point of manufacture

ANNEX C  
to  
Conditional Sale Agreement

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[CS&M Ref. 5566-001]

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1979

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation,

and

RALSTON PURINA COMPANY,  
Lessee.

[Covering 50 4,750 cubic foot Covered Hopper Cars]

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# LEASE OF RAILROAD EQUIPMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1979, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner"), and RALSTON PURINA COMPANY, a Missouri corporation ("Lessee").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC. ("Builder"), pursuant to which the Builder has agreed to manufacture, conditionally sell and deliver to the Trustee the units of railroad equipment described in Appendix A hereto ("Equipment").

The Builder is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") to ST. LOUIS UNION TRUST COMPANY, acting as agent ("Agent") for THE FRANKLIN LIFE INSURANCE COMPANY ("Original Investor" and, together with its successors and assigns, "Investors") under a Participation Agreement dated as of the date hereof ("Participation Agreement") between the Lessee, the Agent, the Owner, the Trustee and the Original Investor.

The Lessee will lease from the Trustee such units of Equipment as are delivered and accepted and settled for under the CSA ("Units") upon the terms and conditions hereinafter provided. The Trustee will assign certain of its rights under this Lease for security to the Agent pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

In consideration of the agreements hereinafter set forth, the Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

#### § 1. NET LEASE

This Lease is a net lease. Each of the Lessee's obligations to pay all rentals and other amounts hereunder

shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner under this Lease or the CSA or otherwise including the Lessee's rights by subrogation thereunder against the Builder, the Agent or otherwise (and including any claims of the Lessee against Railcar Service, Inc., pursuant to the service contract covering the Units); nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Trustee or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Builder, the Trustee, the Owner or the Agent for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA

shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and to execute and deliver to the Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease; provided, however, that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 3.3 thereof or Section 4 of the CSA Assignment shall be ineffective to subject such unit to this Lease. The Lessee hereby represents and warrants to the Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Trustee hereunder.

### § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, (a) one interim rental payment on the Closing Date (as defined in Section 4.2 of the CSA) and (b) thereafter 180 consecutive monthly payments, in advance, commencing on January 1, 1980, and payable on the first day of each of the 179 months thereafter. The interim rental payment for each Unit subject to this Lease shall be in an amount equal to 0.0285% of the Purchase Price (as defined in Section 4.1 of the CSA) of such Unit for each day elapsed from and including the date of acceptance thereof to but not including January 1, 1980. The 180 monthly rental payments for each Unit subject to this Lease shall each be in an amount equal to 0.8831% of the Purchase Price of such Unit.

3.2. Payment on Nonbusiness Day. If any of the rental payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the succeeding business day. The term

"business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, St. Louis, Missouri, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Agent and Trustee. Upon execution and delivery of the Lease Assignment and until the Agent shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee and the Lessee agrees to make all the payments provided for in this Lease to the Agent (other than payments not assigned to the Agent under the Lease Assignment), for the account of the Trustee, in care of the Agent, with instructions to the Agent (a) first to apply such payments to satisfy the obligations of the Trustee under the CSA known to the Agent to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Trustee or to the order of the Trustee in immediately available funds at such place as the Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Trustee in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 hereof in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on December 31, 1994. The obligations of the Lessee hereunder (including but not limited to the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under § 15 hereof.

#### § 5. IDENTIFICATION MARKS

The Lessee will, at its own expense, cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto or, in the case of any Unit not there listed, such identification number as shall be set forth in any supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Trustee's title to and the Agent's security interest in such Unit. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Trustee and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Agent and the Trustee an opinion of counsel to the effect that such statement has been so filed, such filing will protect the Agent's and the Trustee's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Agent and the Trustee in such Units.



The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

#### § 6. GENERAL TAX INDEMNIFICATION

The Lessee assumes responsibility for and agrees to pay and agrees to protect, save, keep harmless and indemnify the Trustee, the Owner and the Agent and their successors and assigns ("Indemnified Persons") against all taxes, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, assessments, fees, withholdings, governmental charges, penalties and interest called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for any Federal, state and local taxes measured by net income based upon the Trustee's receipt of payments provided for herein (other than payments due the Trustee under this § 6 for which the Trustee is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that the Lessee shall not be required to pay any Taxes so long as it is contesting such taxes in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the

reasonable opinion of the Trustee or the Agent, adversely affect the title, property or rights of the Trustee hereunder or the Agent under the CSA. The Lessee agrees to give the Trustee and the Agent notice of such contest within 30 days after institution thereof and the Trustee agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Tax shall have been charged or levied against the Trustee directly and paid by the Trustee, the Lessee shall reimburse the Trustee on presentation of an invoice therefor.

In the event that the Trustee shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall upon demand pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Agent in such Units; provided, however, that to the extent permitted by law, the Lessee shall file such returns, statements and reports relating to sales or use taxes and taxes, fees and charges on or measured by the Trustee's earnings or gross receipts arising from the Units or the value added by the Trustee thereto with respect to any state of the United States or political subdivision thereof as the Lessee shall determine are required to be filed and as shall be prepared by the Lessee, and shall promptly pay such taxes, fees and charges when due. To the extent that the Trustee has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee, and, if necessary, the Trustee will request from the appropriate taxing authorities the information that the Lessee deems necessary in filing such tax reports or in appealing any tax assessments.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however,

that the Lessee shall indemnify and hold the Trustee harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of or incident to any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Trustee, submit to the Trustee copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Trustee of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Trustee reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

All of the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding the expiration of this Lease.

#### § 7. CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments.  
In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days prior to the return of such Unit in the manner set forth in § 14 or 17 hereof (each such occurrence called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Trustee and the Agent with respect thereto. On the next succeeding rental payment date (each such date called a "Casualty Payment Date"), the Lessee shall

pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such Casualty Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Trustee shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 17 hereof, the Lessee shall promptly and fully notify the Trustee with respect thereto and pay to the Trustee (in addition to any amounts due pursuant to § 17 hereof) an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Trustee shall be entitled to recover possession of such Unit.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred and in the event of termination of this Lease, the Lessee will comply with all provisions of § 14 or 17 hereof, as the case may be, except that the Lessee will not be obligated to return such Unit until return thereof to the Lessee. All payments received by the Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to or retained by the Lessee; provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. All payments received by the Trustee or the Lessee after the term of this Lease or any renewal thereof shall be paid over to or retained by the Trustee.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. Provided that the

Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Trustee.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the numbered Casualty Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such numbered Casualty Payment Date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.3 of the CSA) as of such Casualty Payment Date.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence, and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. (a) The Lessee will at all times prior to the return of the Equipment to the Trustee, at its own expense, cause to be carried and maintained public liability insurance providing coverage of not less than \$10,000,000 with respect to third-party personal injury and property damage and may, at its option, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto; provided, however, that if, in the reasonable opinion of the Trustee or the Agent, the Lessee's financial condition has materially changed from its condition as of the date hereof such that property insurance is required to assure the Lessee's ability to meet its obligations under this Lease, the Trustee or the Agent shall so notify the Lessee and the Lessee shall promptly arrange for such insurance to be carried and maintained. The Lessee will carry such insurance in such amounts, for such risks, with such deductibles and with such insurance companies, satisfactory to the Trustee and the Agent and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Agent, the Trustee and the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not

have been paid in full, and thereafter to the Trustee and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation, expiration or other material change in coverage to the Trustee and the Agent and (ii) waive any right to claim any premiums or commissions against the Trustee, the Owner and the Agent. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Trustee, the Owner and the Agent in such policies the insurance shall not require contributions from other policies held by the Trustee, the Owner or the Agent and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee, the Owner and the Agent, respectively) and shall insure the Trustee, the Owner and the Agent regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee, the Owner or the Agent, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Trustee certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.

(b) In the event that the Lessee shall fail to maintain insurance as herein provided, the Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand, reimburse the Trustee for the cost thereof together with interest on the amount of such cost at the rate per annum specified in § 19 hereof.

(c) Notwithstanding the above, the Trustee may (but shall not be obligated to) provide casualty insurance at its own expense in amounts which are in excess of the Casualty Value and which policies may name the Trustee as the loss payee. If the Trustee exercises said option, then the Lessee will cooperate with the reasonable requests of the Trustee so as to effect this insurance coverage; it being understood that any insured coverage under this sub-

section (c) is expressly within the Trustee's option and in no way relieves the Lessee from any of its responsibilities under this § 7.6.

7.7. Insurance Proceeds and Condemnation Payments.

If the Trustee shall receive (directly or from the Agent) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Trustee shall pay the same to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value and accrued rentals in respect of such Units to the Trustee. All insurance proceeds received by the Trustee (directly or from the Agent) in respect of any damage to any Unit not constituting a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Trustee that the damage to such Unit in respect of which such proceeds were paid has been fully repaired.

7.8. Economic Obsolescence. If the Lessee shall, in its reasonable judgment, determine that the Units have become economically obsolete in the Lessee's business ("Economic Obsolescence"), the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Trustee, to terminate this Lease as to all Units then subject hereto (subject to the survival of the obligations described in § 4.1 hereof) as of any succeeding rental payment date specified in such notice ("Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 1, 1990, (ii) no Event of Default or other event which after lapse of time or notice or both would become an Event of Default shall have occurred and be continuing and (iii) on such Termination Date such Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof.

During the period from the date of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall at least five business days prior to the Termination Date certify to the Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units) submitting such bid. On the Termination Date the Trustee

sell such Units for cash to the bidder who shall have submitted the highest bid therefor. The total sale price realized at such sale shall be retained by the Trustee.

On the Termination Date, the Lessee shall pay to the Trustee the excess, if any, of the Casualty Value for such Units (computed as of the previous rental payment date) over the sale price of such Units after the deduction of all expenses incurred by the Trustee in connection with such sale ("Termination Value") (in addition to the rental payment due on such Termination Date). In no event shall the sum of such sale proceeds and the Termination Value hereunder paid to the Trustee be less than the amount required to pay in full the outstanding CSA Indebtedness with respect to such Units, including accrued interest thereon.

If no sale shall occur on the date scheduled therefor as provided, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Trustee an amount equal to the Termination Value and returns the Units to the Trustee pursuant to § 17 hereof; provided, however, that the Lessee, on behalf of the Trustee, may attempt to sell the Units at some later date upon 180 days' prior written notice to the Trustee and following the procedure set forth above.

In the event of any such sale and the receipt by the Trustee of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Trustee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7.8 other than to transfer or to cause to be transferred all of the Trustee's right, title and interest in and to such Units to the purchaser named in the highest bid certified by the Lessee to the Trustee as above provided. Any sale pursuant to this § 7.8 shall be free and clear of all of the Lessee's rights to such Units, but otherwise shall be made without warranties other than against the Trustee's acts.

If the Lessee shall exercise its option to terminate under this § 7.8, the Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee given



90 days after the termination notice is given to the Trustee, elect to retain the Units then subject to this Lease, in which case the Lessee shall not be obligated to pay the Termination Value to the Trustee; provided, however, that this Lease shall not terminate as to such Units unless the CSA Indebtedness in respect of such Units is prepaid on the Termination Date pursuant to Article 7 of the CSA. In the event the Trustee shall so elect to retain such Units, the Lessee shall assemble and deliver such Units to the Trustee in accordance with the provisions of § 17 hereof.

#### § 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Trustee, the Owner and the Agent an accurate statement stating (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Trustee or the Agent may reasonably request and (b) in the case of all Units repainted or repaired during the period covered by such statement, that the numbers and markings required by § 5 hereof have been preserved or replaced. The Trustee and the Agent shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as they may request during the continuance of this Lease.

#### § 9. DISCLAIMER OF WARRANTIES

NEITHER THE TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER

REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Trustee, the Owner and the Lessee, are to be borne by the Lessee; but the Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Trustee or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may (but shall not be obligated to) assert and enforce such claims and rights at the Lessee's sole cost and expense. The Trustee and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Trustee, the Owner or the Agent based on any of the foregoing matters.

#### § 10. APPLICABLE LAWS

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee, the Owner and the Agent, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the

title, operation or use of the Units (all such laws and rules to such extent called "Applicable Laws"), and in the event that the Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Trustee and the Agent, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Trustee or the Agent, adversely affect the property or rights of the Trustee or the Agent under this Lease or under the CSA.

10.2. Reports for Trustee and Agent. The Lessee agrees to prepare and deliver to the Trustee and the Agent at its own expense within a reasonable time prior to the required date of filing (or, to the extent permissible, file on their behalf) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee or the Agent of the Units or the leasing thereof to the Lessee.

## § 11. MAINTENANCE AND ACCESSIONS

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units) which shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, whether or not installed or added to such Unit in contravention of § 11.2(1) hereof, (ii) the cost of which is

included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Agent as their respective interests may appear in the Unit.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay and shall protect, indemnify and hold harmless the Trustee (in both its individual and fiduciary capacities), the Owner, the Agent and their respective successors, assigns, agents and servants ("Indemnified Persons") from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation the attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any claim for patent or trademark infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises

from the gross negligence or wilful misconduct of the Trustee; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Agent's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement (all such matters called "Indemnified Matters"), except to the extent such claim arises from the gross negligence or wilful misconduct of such Indemnified Person. The Lessee shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense defend such action, suit or proceeding, or cause the same to be defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim hereby indemnified against. Upon the payment in full by the Lessee of any indemnities as contained in this § 12; and provided that no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of such Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for its indemnification payments previously made.

### 12.2. Indemnification of Third-Party Beneficiaries.

The Lessee further agrees to indemnify, protect and hold harmless the Trustee, the Investors, the Agent, the Owner and the Builder as third-party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against any such party because of the use in or about the construction or operation of any unit of Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the CSA.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

12.4. No Guarantee by Lessee. Nothing in this § 12 shall constitute a guarantee by the Lessee of the CSA Indebtedness (as defined in the CSA) or a guarantee of the residual value of any Unit.

## § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event an "Event of Default") shall occur:

(A) (1) default shall be made in payment of any amount provided for in § 3 hereof, and such default shall continue for 5 days; or (2) default shall be made in payment of any amount provided in § 7 or 17 hereof, and such default shall continue for 5 days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or of the right to possession of any Units;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee contained herein, in the Participation Agreement or the Consent (as defined in the Participation Agreement) and such default shall continue for 20 days after written notice from the Trustee or the Agent to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein, in the Participation Agreement or in any certificate or statement furnished to the Trustee pursuant to or in connection with any such agreement proves untrue in any material respect as of the date of making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless

such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

then, in any such case, the Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof (including without limitation after-tax losses of income tax benefits); or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Trustee, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and possess the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever, without penalty; but the Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for



loss of a bargain and not as a penalty whichever of the following amounts that the Trustee in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Trustee reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Lessee shall, if the Trustee shall so elect, pay to the Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee shall not be deemed exclusive, but shall be cumulative and may be

exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver.

The failure or delay of the Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default.

The Lessee agrees to furnish written notice to the Trustee and the Agent, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which after notice or lapse of time or both would constitute such an Event of Default, specifying such condition and the nature and status thereof. A "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee contained in this Lease, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

**§ 14. RETURN OF UNITS UPON DEFAULT**

14.1. Return of Units.

If this Lease shall terminate pursuant to § 13 hereof or Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, shall comply with all Applicable Laws then in effect and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11 hereof, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as

above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

(c) cause the same to be transported to any reasonable interchange point as directed by the Trustee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Units in good order and repair and will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. In the event any Unit is not assembled, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall in addition pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the percentage of the Purchase Price of such Unit for each such day (obtained by dividing the basic lease rate as set forth in § 3.1 hereof for each monthly payment for such Unit by 30) exceeds the actual earnings received by the Trustee on such Unit for each such day. Such payment shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this section.

14.2. Trustee Appointed Agent of Lessee. Without limiting the obligations of the Lessee under the foregoing sections, the Lessee hereby irrevocably appoints the Trustee

as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee without the consent of the Lessee. The Lessee hereby acknowledges the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units. (1) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Agent, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not part with the possession or control of or allow to pass out of its possession or control any of the Units without the prior written consent of the Trustee and the Agent, except as provided in said paragraph (2). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which if unpaid might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Trustee or the Agent or resulting from claims against the Trustee or the Agent not related to the ownership of the Units upon or with respect to any Unit, including any accession thereto, or the interest of the Trustee, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent and the Trustee, materially adversely affect the interest of the Agent or the Trustee in the Equipment, the Agent's interest in the income and proceeds from the Equipment or otherwise under this Lease or the CSA.

(2) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be

entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which any of their railroad equipment is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit predominantly outside the United States. Any sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Agent under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease.

15.3. Merger, Acquisition or Consolidation.

Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign its leasehold interest under this Lease or possession of the Units to any corporation incorporated under the laws of any state of the United States or the District of Columbia into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety and which shall have duly assumed the obligations of the Lessee hereunder; provided that such assignee will not, upon the effectiveness thereof, be in default under any provision of this Lease.

§ 16. RENEWAL OPTIONS

16.1. Renewal for Successive Period. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 90 days nor more than 270 days prior to the end of the original term of this Lease elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period of 5 years or such other time acceptable to both the Lessee and Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable monthly in advance on the first day of each month in each year of such extended term. In the event of any such renewal, the Casualty Value payable

in respect of a Casualty Occurrence involving any Unit shall be as agreed upon by the Trustee and the Lessee.

16.2. Determination of Fair Market Rental.

(1) The Fair Market Rental for each extended term of this Lease shall be equal to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any

judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Trustee upon such storage tracks as the Trustee may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Trustee to store such Unit on such tracks for a period not exceeding 6 months and transport the same, at any time within such 6-month period, to any reasonable place or to any connecting carrier for shipment, all as directed by the Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. Upon delivery pursuant to the preceding sentence, the Lessee shall be absolved of any further responsibility for such Units. During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet all standards of the Applicable Laws then in effect and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee shall be required to pay to the Trustee rent for each day any Unit is not so returned in an amount equal to 0.0285% of the Purchase Price of such Unit for each day from the expiration of the Lease to the date such Unit is returned.

In the event any Unit is not assembled, delivered, stored and transported, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Trustee on such Unit for each such day, unless the Trustee shall have received such per diem.

#### § 18. FILING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance of any Unit hereunder, and will undertake the filing required of the Trustee under the CSA; provided, however, that the Lessee shall be entitled to rely on advice from special counsel for the Agent that such filing has occurred. The Lessee will from time to time perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Trustee or the Agent for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Agent and the Trustee evidence of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Trustee.

#### § 19. INTEREST ON OVERDUE RENTALS

The Lessee shall promptly pay, to the extent legally enforceable, an amount equal to the interest at 12-3/8% per annum on any overdue rentals and other obligations due hereunder for the period of time during which they are overdue.

#### § 20. INCOME TAXES

§ 20.1. Tax Assumptions. This Lease and the CSA have been entered into on the assumptions that (A) the Owner,



as the beneficial owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof ("Code"), to an owner of property, including without limitation (1) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code ("ADR Deduction") (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum-of-the-years-digits method of depreciation when most beneficial to the Trustee, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under section 1012 of the Code ("Basis") and (d) taking into account a salvage value, after the reduction allowed by section 167(f) of the Code, of zero, (2) deductions with respect to interest payable under the CSA pursuant to section 163 of the Code ("Interest Deduction") and (3) the 10% investment credit with respect to 100% of the Basis of the Units ("Investment Credit") pursuant to section 38 and related sections of the Code and (B) all amounts includible in gross income by the Trustee or the Owner with respect to this Lease will be treated as income from sources within the United States.

#### 20.2. Lessee's Representations and Agreements.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Trustee or the Owner, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying by the Trustee, and will on written request by the Trustee provide the Trustee with such records as will enable the Owner to determine whether it is entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units and (B) to treat amounts includible

in gross income with respect to this Lease as income from sources within the United States.

The Lessee represents and warrants that (i) all the Units constitute property the entire Basis of which qualifies for the 10% Investment Credit under section 50 of the Code; (ii) at the time the Trustee becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code, and at the time the Trustee becomes the owner of the Units, the units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Trustee; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) none of the units will be "used predominantly outside the United States" within the meaning of section 48(a)(2) of the Code; and (v) all items includible in gross income by the Trustee or the Owner with respect to this lease are entitled to treatment as income from sources within the United States.

20.3. Indemnification. If, for any reason whatsoever (other than for the reasons set forth below), all or any part of the ADR Deduction, the Interest Deduction or the Investment Credit with respect to any Unit shall be unavailable in computing each of the items of income, gain, loss, deduction or credit of the Owner or the Trustee, or the Owner shall determine that all amounts includible in gross income with respect to this Lease cannot be treated as income from sources within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, the rental applicable to such Unit set forth in § 3 shall, on the next succeeding rental payment date after written notice to the Lessee by the Trustee of such fact, be increased by such amount as shall be required, in the reasonable opinion of the Owner, to cause the Owner's net after-tax annual cash flow and net after-tax rate of return to be at least the same as such net after-tax annual cash flow and net after-tax rate of return would have been had the ADR Deduction, the Interest Deduction and the Investment Credit been wholly available and had the Trustee and the Owner been entitled to treat all amounts includible in gross income with respect to this Lease as income from sources within the United States; provided, however, that such rental shall not be so increased to the extent that the

ADR Deduction, the Interest Deduction or the Investment Credit with respect to such Unit is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Trustee the amounts stipulated pursuant to § 7 hereof;

(ii) a voluntary transfer by the Trustee of legal title to such Unit, a voluntary disposition by the Trustee of any interest in such Unit or a voluntary reduction by the Trustee of its interest in the rentals from such Unit under this Lease (except pursuant to an assignment of this Lease to the Agent) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Owner to claim the ADR Deduction, the Interest Deduction or the Investment Credit on its income tax return for the appropriate year, unless the Owner shall have received an opinion of independent tax counsel to the effect that the Owner is not entitled to claim the ADR Deduction, the Interest Deduction or the Investment Credit; or

(iv) the failure of the Owner to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction.

20.4. Adjustment of Rentals. If, for any reason whatsoever, all or any part of the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease ("Additional Expenditures") made by the Lessee under and pursuant to the terms of this Lease or otherwise is required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals of the Unit set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice to the Trustee pursuant to the following sentence that such inclusion in the Trustee's or the Owner's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Owner (after taking into account any present or future tax benefits that the Owner reasonably anticipates it will

derive from its additional investment in the Units by reason of such inclusion, including without limitation any current deductions, future depreciation deductions and investment tax credit), cause the Owner's net after-tax annual cash flow and net after-tax rate of return (calculated on the same basis as used by the Owner in originally evaluating this transaction) to equal the net after-tax annual cash flow and net after-tax rate of return that would have been realized by the Owner if the cost of such Additional Expenditures had not been includible in the Owner's gross income. The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Trustee or the Owner gives the Lessee written notice that the Trustee's or the Owner's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which are required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Trustee and the Owner describing such Additional Expenditures in reasonable detail.

20.5. Adjustment of Casualty Values. In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in § 7 hereof shall be adjusted accordingly.

20.6. IRS Ruling. The Trustee and the Owner are entitled, but are not required, to request a ruling from the Internal Revenue Service ("Ruling") to the effect, among other things, that this Lease is a true lease, that the Trustee is the owner of the Units and that the Owner has the right to claim the ADR Deduction, the Interest Deduction and the Investment Credit. The Lessee will furnish such documents, records and representations, including but not limited to evidence of the useful life and residual value of the Units sufficient to support the matters claimed in any request for the Ruling, as shall be deemed necessary and appropriate for such request by the Trustee. The Lessee shall join in such request. If the Ruling received by the Trustee and the Owner requires the cost of any Additional Expenditures made by the Lessee to be included in the gross income of the Trustee or the Owner, the Trustee shall, upon request and at the expense of the Lessee, seek a modification of the aforementioned requirement.

20.7. Survival. The Lessee's and the Trustee's agreements to pay any sums which may become payable pursuant to this § 20 shall survive the expiration or other termination of this Lease.

#### § 21. NOTICES

Any document or notice required or permitted to be given to either party hereto shall be deemed to have been given when delivered or mailed, first class, postage prepaid, addressed as follows:

(a) if to the Trustee, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(b) if to the Lessee, at Checkerboard Square, St. Louis, Missouri 63188, attention of Robert W. Lockwood;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department.

#### § 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall

be valid unless in writing and signed by duly authorized officers for the Trustee and the Lessee.

#### § 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto other than the Owner, the Agent, the Investors, the Builder and the permitted successors and assigns of such parties, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party, except as aforesaid.

#### § 25. EXECUTION

This Lease may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent pursuant to the Lease Assignment shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

#### § 26. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### § 27. NO RECOURSE; IMMUNITIES

27.1. No Recourse. No recourse shall be had in respect of any obligation due under this Lease or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever

released as a condition of and as consideration for the execution of this Lease.

27.2. Immunities. Each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner on account of any representation, warranty or agreement herein of the Trustee (except in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder may look to said Trust Estate for satisfaction of the same.

#### § 28. AGREEMENTS FOR BENEFIT OF TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder (including but not limited to its rights under §§ 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Trustee and any of the Trustee's assigns (including the Agent).

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee,

by

\_\_\_\_\_  
Assistant Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer

RALSTON PURINA COMPANY,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_



STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this                    day of December 1979, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MISSOURI, )  
 ) ss.:  
COUNTY OF , )

On this            day of December 1979, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is            of RALSTON PURINA COMPANY, a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plants</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Delivery</u>
100 4750 cubic foot truck gravity discharge covered hopper cars	LO	as set forth in Purchase Order	Oklahoma City, Oklahoma; Longview, Texas	50	PLMX 11186- PLMX 11235	\$44,695	\$2,234,750	December 1979, F.O.B. point of manu- facture

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
1	108.7850	41	102.1268
2	108.9254	42	101.9927
3	109.0671	43	101.8431
4	109.2102	44	101.6922
5	109.3283	45	101.5399
6	109.4475	46	101.3720
7	109.5416	47	101.2026
8	109.6366	48	101.0316
9	109.7325	49	100.8448
10	109.8031	50	100.6564
11	109.8743	51	100.4662
12	109.9463	52	100.2744
13	109.9926	53	100.0701
14	110.0395	54	99.8641
15	110.0868	55	99.6455
16	110.1346	56	99.4250
17	110.1615	57	99.2025
18	110.1887	58	98.9673
19	110.1949	59	98.7301
20	110.2012	60	98.4906
21	110.2076	61	91.5784
22	110.1927	62	91.3239
23	110.1778	63	91.0671
24	110.1627	64	90.8079
25	110.1263	65	90.5396
26	110.0895	66	90.2688
27	110.0524	67	89.9887
28	110.0151	68	89.7060
29	109.9596	69	89.4205
30	109.9036	70	89.1254
31	109.8292	71	88.8275
32	109.7543	72	88.5268
33	109.6787	73	88.2163
34	109.5845	74	87.9028
35	109.4895	75	87.5863
36	109.3938	76	87.2668
37	102.6093	77	86.9413
38	102.4937	78	86.6126
39	102.3772	79	86.2778
40	102.2597	80	85.9392

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
81	85.5968	121	61.5709
82	85.2475	122	61.0547
83	84.8943	123	60.5319
84	84.5371	124	60.0023
85	77.5030	125	59.4780
86	77.1348	126	58.9463
87	76.7625	127	58.4193
88	76.3860	128	57.8850
89	76.0062	129	57.3432
90	75.6221	130	56.8060
91	75.2341	131	56.2614
92	74.8411	132	55.7093
93	74.4433	133	55.1616
94	74.0413	134	54.6063
95	73.6343	135	54.0435
96	73.2222	136	53.4731
97	72.8059	137	52.9106
98	72.3845	138	52.3400
99	71.9578	139	51.7770
100	71.5260	140	51.2060
101	71.0933	141	50.6269
102	70.6554	142	50.0553
103	70.2168	143	49.4756
104	69.7721	144	48.8877
105	69.3215	145	48.3072
106	68.8695	146	47.7185
107	68.4114	147	47.1215
108	67.9472	148	46.5162
109	67.4814	149	45.9205
110	67.0094	150	45.3165
111	66.5311	151	44.7221
112	66.0466	152	44.1194
113	65.5640	153	43.5083
114	65.0750	154	42.9066
115	64.5879	155	42.2963
116	64.0944	156	41.6773
117	63.5945	157	41.0677
118	63.0963	158	40.4495
119	62.5916	159	39.8225
120	62.0804	160	39.1867

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
161	38.5612
162	37.9270
163	37.3030
164	36.6703
165	36.0287
166	35.3974
167	34.7572
168	34.1081
169	33.4691
170	32.8211
171	32.1638
172	31.4973
173	30.8418
174	30.1771
175	29.5235
176	28.8606
177	28.1883
178	27.5271
179	26.8566
180	26.1766

ANNEX D  
to  
Conditional Sale Agreement

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[CS&M Ref. 5566-001]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of December 1, 1979

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation,

and

ST. LOUIS UNION TRUST COMPANY,  
as Agent.

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ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 1, 1979, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner"), and ST. LOUIS UNION TRUST COMPANY, a Missouri corporation, as agent ("Agent") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC. ("Builder"), providing for the conditional sale to the Trustee of such units of railroad equipment ("Units") described in Annex B to the CSA as are delivered to and accepted by the Trustee and settled for thereunder.

The Trustee and RALSTON PURINA COMPANY ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Trustee to the Lessee of the Units.

The Trustee will assign certain of its rights under the Lease to the Agent in order to secure the obligations of the Trustee under the CSA and as an inducement to the Investors (as defined in the Participation Agreement) to invest in the CSA Indebtedness (as defined in the CSA).

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. The Trustee hereby transfers and assigns to the Agent, as collateral security for the payment and performance of the obligations of the Trustee under the CSA, all the Trustee's right, title and interest, powers, privileges and other benefits under the Lease (except any amounts of indemnity payable to the Trustee in its individual capacity), including without limitation the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Trustee from the Lessee under or pursuant to the provisions of the Lease, whether as rent, casualty payment, indemnity (except sums payable to the Trustee or the Owner pursuant to §§ 6, 9 and 20 of the Lease), liquidated

damages or otherwise (such moneys called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to do any and all other things whatsoever which the Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Trustee hereby irrevocably authorizes and empowers the Agent in its own name or in the name of its nominee or in the name of the Trustee or as its attorney to demand, sue for, collect and receive any and all Payments to which the Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee pursuant to the Lease for the account of the Trustee. To the extent received, the Agent will apply such Payments in accordance with Paragraph 10 of the Participation Agreement to satisfy the obligations of the Trustee under the CSA and, so long as no event of default under the CSA or event which with notice or lapse of time or both would constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Trustee on the same date such Payment is applied to satisfy such obligations of the Trustee, by check mailed to the Trustee on such date or, upon written request of the Trustee, by bank wire to the Trustee at such address as may be specified to the Agent in writing, and such balance shall be retained by the Trustee. If the Agent shall not receive any rental payment under § 3.1 of the Lease when due, the Agent shall notify the Trustee at the address set forth in the Lease; provided, however, that the failure of the Agent to so notify the Trustee shall not affect the rights of the Agent or the obligations of the Trustee hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to or transfer or in any way affect or modify the liability of the Trustee under the Lease. Notwithstanding this Assignment or any subsequent assignment, all obligations of the Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against and only against the Trustee or persons other than the Agent.

3. The Trustee will faithfully perform each obligation, covenant and agreement which the Lease provides is to be performed by the Trustee and, without the written



consent of the Agent, will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee (including without limitation the obligation to pay the rents in the manner and at the time and place specified therein), or enter into any agreement amending, modifying or terminating the Lease. Any amendment, modification or termination of the Lease without the Agent's consent shall be void.

4. The Trustee hereby constitutes the Agent its true and lawful attorney, irrevocably, with full power (in the name of the Trustee or otherwise) to demand and receive any and all Payments due and to become due under or arising out of the Lease to which the Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable.

5. Upon the full discharge and satisfaction of all the obligations of the Trustee under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate, and all right, title and interest of the Agent in and to the Lease shall revert to the Trustee without further action on the part of the Agent, except that the Agent, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument transferring such right, title and interest to the Trustee. Promptly following such full discharge and satisfaction, the Agent will advise the Lessee in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Agent.

6. The Trustee will pay and discharge any and all claims, liens, charges, security interests or other encumbrances (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Trustee or the Owner or their successors and assigns (other than the Agent) not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt of the rentals and the other payments under

the Lease and any other proceeds from the Units) unless the Trustee or the Owner shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent, adversely affect the interest of the Agent hereunder.

7. The Trustee will from time to time execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including without limitation the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder. The Agent will give written notice to the Trustee and the Lessee of any such assignment.

9. This Assignment shall be governed by and construed in accordance with the laws of the State of Missouri, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Trustee shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or mailed to the Agent at its address set forth in Article 21 of the CSA or at such other address as the Agent shall designate.

11. So long as no event of default under the CSA has occurred and is continuing, the Agent will not exercise or seek to exercise any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Trustee to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and the Trustee may exercise or seek to exercise its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Trustee shall not terminate the Lease or otherwise exercise or seek to exercise any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease without the prior written consent of the Agent.

12. Notwithstanding anything contained herein to the contrary, each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution on account of any representation, warranty or agreement herein of the Trustee (except in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; provided, however, that the Agent or any person claiming by, through or under the Agent making claim hereunder may look to said Trust Estate for satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee,

by

\_\_\_\_\_  
Assistant Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer

ST. LOUIS UNION TRUST COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this            day of December 1979, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MISSOURI, )  
 ) ss.:  
COUNTY OF , )

On this                    day of December 1979, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is                    of ST. LOUIS UNION TRUST COMPANY, a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation..

Notary Public

[Notarial Seal]

My Commission expires

## CONSENT AND AGREEMENT

RALSTON PURINA COMPANY, a Missouri corporation ("Lessee"), the lessee named in the Lease of Railroad Equipment ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby acknowledges receipt of a copy of the Lease Assignment and consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all Payments (as defined in the Lease Assignment) payable under the Lease directly to ST. LOUIS UNION TRUST COMPANY, as agent ("Agent"), the assignee named in the Lease Assignment, at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent);

(2) the Agent shall be entitled to the benefits of and to receive and enforce performance of all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Trustee; and the Agent shall not by virtue of the Lease Assignment be or become subject to any liability or obligation under the Lease or otherwise; and

(3) without the prior written consent of the Agent, the Lease shall not be terminated or modified nor shall any action be taken or omitted by the Lessee which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

RALSTON PURINA COMPANY,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1979

between

TRINITY INDUSTRIES, INC.

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation.

11-3/8% Conditional Sale Indebtedness Due 1994  
[Covering 50 4,750 cubic foot Covered Hopper Cars]

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# CONDITIONAL SALE AGREEMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.



CONDITIONAL SALE AGREEMENT dated as of December 1, 1979, between TRINITY INDUSTRIES, INC., a Texas corporation ("Builder" or "Vendor" as the context may require, as set forth in Article 1 hereof), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner").

The Builder has agreed to construct, sell and deliver to the Trustee, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto ("Equipment").

The Trustee is entering into a Lease of Railroad Equipment dated as of the date hereof with RALSTON PURINA COMPANY ("Lessee") substantially in the form of Annex C hereto ("Lease").

ST. LOUIS UNION TRUST COMPANY ("Agent" or "Vendor" as the context may require, as set forth in Article 1 hereof) is acting as agent for THE FRANKLIN LIFE INSURANCE COMPANY ("Original Investor" and, together with its successors and assigns, "Investors") pursuant to a Participation Agreement dated as of the date hereof ("Participation Agreement") among the Lessee, the Agent, the Owner, the Trustee and the Original Investor.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

#### ARTICLE 1. ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that the Trustee will furnish 42% of the Purchase Price (as defined in Section 4.1 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Agent pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") between the Builder and the Agent.

1.2 Lease Assignment. As security for the payment and performance of all the Trustee's obligations hereunder, the Trustee will assign to the Agent certain of its rights, title and interest in and to the Lease pursuant to an Assignment of Lease and Agreement substantially in the form of Annex D hereto ("Lease Assignment"), and the Lessee shall acknowledge and consent thereto pursuant to a Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

1.3 Meaning of "Vendor" and "Builder". The term "Vendor", whenever used in this Agreement, means the Builder before any assignment of its rights hereunder and, after any such assignment, both any assignee as regards any assigned rights and also any assignor as regards any rights retained by such assignor. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

## ARTICLE 2. CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant or plants set forth in Annex B hereto and will sell and deliver the Equipment to the Trustee. Each unit of Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Trustee and the Lessee (such specifications and any modifications called "Specifications"). The design, quality and component parts of each unit of Equipment shall conform, on the date of delivery and acceptance thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to each such unit of Equipment and each such unit will be new railroad equipment when delivered to the Trustee and the original use thereof shall commence with the Trustee.

## ARTICLE 3. INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver

the units of Equipment to the Trustee at the Builder's plant or plants specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of Equipment shall not be made until the filings referred to in Article 19 hereof have been made; and provided further that the Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) or (d) of Section 16.1 hereof or the occurrence of any event of default (as described in Section 16.1 hereof) or of any event which with notice or lapse of time or both would constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder (a) following receipt of written notice from the Trustee or the Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) until it receives notice from the Agent and the Trustee that the respective conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

3.2. Force Majeure. The Builder's obligation as to the time of delivery set forth in Annex B is subject to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riots or civil commotion, sabotage, strikes, accidents, fires, floods, explosions, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. Exclusion of Equipment. Any unit of Equipment not delivered to the Trustee pursuant to Section 3.1 hereof and accepted by the Trustee hereunder and settled for on or before December 31, 1979, shall be excluded from this Agreement, and the Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any unit of Equipment shall be so excluded, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Delivery to and acceptance by or on behalf of the Trustee of any unit so excluded shall be ineffective, ab initio, to impose on the Trustee any liability, obligation or responsibility with respect thereto.

3.4. Inspection. During construction, the Equip-

ment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees of the Lessee), and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder will inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of Equipment, such unit or units shall be presented to an authorized inspector of the Trustee for inspection at a place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such authorized inspector shall execute and deliver to the Builder a certificate of acceptance ("Certificate of Acceptance") stating that such unit has been inspected and accepted on behalf of the Trustee and is marked in accordance with Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Section 14.4 hereof. By § 2 of the Lease and by this Section 3.4, the Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit hereunder by the Trustee.

3.5. Builder's Responsibilities After Delivery. Upon delivery to and acceptance by the Trustee of units of Equipment at the place specified for delivery, the Builder shall have no further responsibility for nor bear any risk of any damage to or the destruction or loss of any such unit; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Section 14.4 hereof.

#### ARTICLE 4. PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price". The base price per unit of Equipment is set forth in Annex B hereto ("Purchase Price") and shall be set forth in the invoice delivered by the Builder to the Trustee ("Invoice"), without adjustment.

4.2. Settlement and Closing Date. The Equipment shall be settled for one group of units delivered to and accepted by the Trustee. The term "Closing Date" shall be such date occurring not more than 10 business days following presentation of the Invoice and the Certificate or Certifi-

cates of Acceptance by the Builder to the Trustee (but not later than December 31, 1979) as is specified by the Lessee by five days' notice thereof to the Trustee, the Agent and the Builder. The place of each closing shall be determined by mutual agreement among the parties hereto. The term "business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, St. Louis, Missouri, or New York, New York, are authorized or obligated to remain closed.

4.3. Indebtedness of Trustee to Vendor. Subject to the terms of this Agreement and the satisfaction of the conditions set forth in the Participation Agreement, the Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of the aggregate Purchase Price of the Equipment and hereby promises to pay the same in immediately available funds to the Vendor at such place as the Vendor may designate, as follows:

(a) on the Closing Date, an amount equal to 42% of the aggregate Purchase Price of the Equipment for which settlement is being made; and

(b) in 179 monthly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Equipment for which settlement is being made less the aggregate amount paid with respect thereto pursuant to subsection (a) of this Section (said portion of the aggregate Purchase Price payable in installments called "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest.

(a) The installments of the CSA Indebtedness shall be payable monthly, commencing on February 1, 1980, and payable on the first day in each of the 178 months immediately following such first payment (each such date a "Payment Date"). The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date at the rate of 11-3/8% per annum. Interest on the unpaid balance of the CSA Indebtedness shall be payable to the extent accrued on January 1, 1980, and on each payment Date. The amounts of principal of and interest on CSA Indebtedness payable on each Payment Date shall be calculated to be substantially in proportion to the allocation of principal and interest on such Payment Date set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such installments of principal and interest shall completely amortize the CSA

Indebtedness at maturity. The Trustee will furnish to the Vendor and the Lessee a schedule showing the respective amounts of principal and interest payable on each Payment Date promptly after the Closing Date, in such number of counterparts as shall be requested by the Vendor.

(b) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months, except that interest payable on January 1, 1980, shall be computed on an actual elapsed day, 365-day year, basis.

4.6. Penalty Interest. The Trustee will pay interest, to the extent legally enforceable, at the rate of 12-3/8% per annum ("Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made in immediately available funds in such coin or currency of the United States as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Articles 7 and 16 hereof, the Trustee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

4.8. Liability of Trustee Limited to "Income and Proceeds from Equipment". Notwithstanding any other provision of this Agreement (including but not limited to any provision of Articles 16 and 17 hereof), but not limiting the effect of Article 22 hereof, the liability of the Trustee or any assignee of the Trustee for all payments to be made by it including any liability arising out of or in connection with the performance of its obligations under this Agreement, with the exception only of the payments to be made pursuant to Section 4.3 (a) hereof and the proviso to Section 13.3 hereof, shall not exceed an amount equal to and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. As used herein

the term "income and proceeds from the Equipment" shall mean:

(i) if one of the events of default specified in Section 16.1 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee or any assignee of the Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in § 7 of the Lease) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease (except any indemnity paid or payable to the Trustee pursuant to § 6 or 12 of the Lease) and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in clauses (a) and (b) of subsection (i) above (not including amounts paid by the Lessee to the Trustee as reimbursement of sums paid by the Trustee on account of prior defaults under subparagraph A of § 13.1 of the Lease) as are indefeasibly received by the Trustee or any assignee of the Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) which were received by the Trustee or any assignee of the Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Trustee or any assignee of the Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts

excluded from the Lease Assignment. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this Section, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this Section. Nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

#### ARTICLE 5. SECURITY INTEREST IN EQUIPMENT

5.1. Vendor To Retain Security Interest; Accessions Are Part of Equipment. The Vendor hereby retains a security interest in the Equipment until the Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Trustee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the United States Department of Transportation, the Interstate Commerce Commission, the Association of American Railroads or any other applicable regulatory body shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used herein.

5.2. Obligations Upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee at that time, will (a) execute an instrument



releasing its security interest in the Equipment and transferring such interest to the Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Trustee at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment and (c) pay to the Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as provided therein. The Trustee hereby waives and releases any and all rights existing or that may be acquired in or to the payment of any penalty or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Trustee.

#### ARTICLE 6. TAXES

6.1. General Tax Indemnification. The Trustee agrees to pay and to indemnify and hold the Vendor harmless from all Taxes (as defined in § 6 of the Lease) upon demand by the Vendor; excluding, however, (i) Taxes measured solely by the net income based upon the Vendor's receipt of payments provided for herein (other than payments due the Vendor under this Article 6 for which the Vendor is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes; and (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; provided, however, that the Trustee shall not be required to pay any Taxes during the period it may be contesting the same in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement.

6.2. Payments by Vendor. If any Taxes shall have been charged or levied against the Vendor directly and paid by the Vendor, the Trustee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid

by the Vendor shall be secured by and under this Agreement; provided, however, that the Trustee shall not be obligated to reimburse the Vendor for any Taxes so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Trustee shall have approved in writing the payment thereof.

6.3. Survival. All of the obligations of the Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all other amounts due under this Agreement.

#### ARTICLE 7. MAINTENANCE; CASUALTY OCCURRENCES

7.1. Maintenance. The Trustee shall, at its own cost and expense, maintain and keep each unit of Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws (as defined in § 10 of the Lease).

7.2. Casualty Occurrences. In the event that any unit of Equipment shall suffer a Casualty Occurrence as defined in § 7 of the Lease or in the event that the Lease is terminated pursuant to § 7.8 thereof (each such event a "Casualty Occurrence"), the Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the Casualty Payment Date or the Termination Date (as each is defined in § 7 of the Lease), as the case may be (each such date a "Casualty Payment Date"), the Trustee shall pay to the Vendor a sum equal to the Casualty Value (as defined in Section 7.3 hereof) of such unit suffering a Casualty Occurrence as of such Casualty Payment Date. The Trustee shall file or cause to be filed with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this Section shall be applied on the date of such payment to prepay the CSA Indebtedness, without penalty or premium, ratably in accordance with the unpaid balance of each installment, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. The Vendor shall promptly cause to be furnished to the Trustee and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as each may request.

7.3. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this Section 7.3 and Section 7.4 hereof, each payment of the Purchase Price made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment.

7.4. Obligations upon Payment of Casualty Value. Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument confirming such passage to the Trustee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such unit.

#### ARTICLE 8. INSURANCE PROCEEDS; CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, the Vendor shall pay such insurance proceeds or condemnation payments to the Trustee, after receipt by the Vendor of the Casualty Value of such unit unless an event of default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Trustee upon proof satisfactory to the Vendor that the damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9. REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1981, the Trustee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease. The Vendor, by its agents, shall have the right once in each calendar year (but shall be under no duty) to inspect the Equipment and the Trustee's and the Lessee's records with respect thereto.

## ARTICLE 10. MARKING OF EQUIPMENT

The Trustee will cause each unit of Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor which previously shall have been filed with the Vendor and filed by or on behalf of the Trustee in all public offices where this Agreement shall have been filed. Except as aforesaid, the Trustee will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

## ARTICLE 11. COMPLIANCE WITH APPLICABLE LAWS

During the term of this Agreement, the Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including without limitation the use, maintenance and operation of the Equipment) with all Applicable Laws (as defined in § 10 of the Lease) and in the event the Applicable Laws require any alteration, replacement or addition of or to any part on any unit of Equipment, the Trustee will or will cause any lessee to conform therewith at no expense to the Vendor; provided, however, that the Trustee or any lessee may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

## ARTICLE 12. POSSESSION AND USE

12.1. Possession and Use of Equipment by Trustee. So long as an event of default shall not have occurred and be continuing under this Agreement, the Trustee shall be entitled to the possession and use of the Equipment from and after delivery of the Equipment by the Builder to the Trustee, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights and shall, except as provided in § 4.2 of the Lease, be subject to the remedies of the Vendor under this Agreement. The Lease shall not be amended in any material respect or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

## ARTICLE 13. PROHIBITION AGAINST LIENS

13.1. Trustee To Discharge Liens. The Trustee will pay or discharge any and all sums claimed by any party from, through or under the Trustee, the Owner or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to any unit of Equipment or the income and proceeds from the Equipment, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in the Equipment, its interest in said income and proceeds from the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate material-

men's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 22 Except in Certain Instances. The obligations of the Trustee under this Article 13 are subject to the limitations contained in Section 4.8 and Article 22 hereof; provided, however, that the Trustee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under the Trustee and its successors and assigns and, to the extent it receives funds sufficient for such purpose from the Owner, from, through or under the Owner and its successors and assigns, not arising out of the transactions contemplated hereby (but including taxes arising out of the receipt of rentals and other payments under the Lease and any other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to any unit of Equipment or the Trustee's interest in the Lease and the payments to be made thereunder, but the Trustee shall not be required to pay or discharge any such tax, claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in the Equipment, its interest in the income and proceeds from the Equipment or otherwise under this Agreement.

#### ARTICLE 14. INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Trustee shall pay and shall protect, indemnify and hold harmless the Vendor, its successors, assigns, agents and servants ("Indemnified Persons"), from and against any and all Indemnified Matters (as defined in § 12 of the Lease), except that the Trustee shall not be liable to the Builder in respect of any Indemnified Matter to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's warranties or patent indemnities referred to in Section 14.4 hereof. The Trustee shall be obligated under this Article 14, whether or not any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Trustee under this Article 14 without

first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Trustee may and, upon such Indemnified Person's request, will, at the Trustee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Trustee and approved by such Indemnified Person and, in the event of any failure by the Trustee to do so, the Trustee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Trustee is required to make any payment under this Article 14, the Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The Vendor and the Trustee agree to give each other written notice of any claim or liability hereby indemnified against promptly upon obtaining knowledge thereof. Upon the payment in full by the Trustee of any indemnity as contained in this Article 14, and provided that no event of default described in Section 16.1 hereof or other event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing, the Trustee shall be subrogated to any right of such Indemnified Person in respect of the Indemnified Matter. Any payments received by such Indemnified Person from the Lessee pursuant to the Lease as a result of any Indemnified Matter shall be paid to the Trustee to the extent necessary to reimburse the Trustee for indemnification payments previously made by the Trustee in respect of such Indemnified Matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Trustee therefor,

from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Trustee Not Released if Equipment Damaged or Lost. The Trustee will bear the responsibility for and risk of any damage to or destruction or loss of each unit of Equipment delivered and accepted pursuant to Article 3 hereof and shall not be released from its obligations hereunder in any such event.

14.4. Warranties and Patent Indemnities. The agreement of the parties relating to the Builder's warranties of material and workmanship and to patent indemnification are set forth in Items 2 and 3 of Annex A hereto.

The Builder represents and warrants to the Trustee and the Agent and their respective successors and assigns that at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Builder will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights created by this Agreement, the CSA Assignment and the Lease and that at such time each such unit will be new railroad equipment the original use of which will commence with the Trustee.

The Builder hereby represents and warrants to the Trustee, the Agent and their successors and assigns that this Agreement has been duly authorized by it and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the Trustee, this Agreement is a legal, valid and binding instrument, enforceable against the Builder in accordance with its terms.

The Builder represents that it is not entering into this Agreement or into any other transaction contemplated by the Participation Agreement directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or, insofar as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.



## ARTICLE 15. ASSIGNMENTS

15.1. Assignment by Trustee. The Trustee will not transfer the right to possession of any unit of Equipment (except to the Lessee pursuant to the Lease) or sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor, except as provided in the Trust Agreement.

15.2. Assignment by Vendor. Any or all of the rights, remedies, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to or relieve the Builder from any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof, or relieve the Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15 or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Section 15.2 hereof, either the assignor or the assignee shall give written notice to the Trustee and the Lessee stating the identity and address of the assignee, together with a copy of such assignment, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee of the notification of any such assignment, all payments thereafter to be made by the Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Setoff Against CSA Indebtedness. The Trustee recognizes that this Agreement will be assigned to the Agent as provided in the CSA Assignment. The Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Agent to the entire unpaid CSA Indebt-

edness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder or any other person with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or with respect to any indemnity herein contained or arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Lessee by any person. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee against and only against the Builder or such other person, as the case may be.

#### ARTICLE 16. DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of CSA Indebtedness.  
In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Trustee shall fail to pay or cause to be paid in full any sum payable by the Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Trustee) and such default shall continue for 10 business days after the date such payment is due and payable; or

(b) the Trustee (irrespective of the provisions of Article 4 or 22 hereof or any other provision of this Agreement limiting the liability of the Trustee) or the Lessee shall, for more than 30 days after the Vendor shall have given notice in writing demanding performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement or of any other agreement contemplated by the Participation Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed,

nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed pursuant to a court order or decree by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(d) any other proceeding shall be commenced by or against the Trustee, the Owner or the Lessee for any relief which includes or might result in any modification of the obligations of the Trustee hereunder, the Owner under the Trust Agreement or the Lessee under the Lease under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all such obligations shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Trustee, the Owner or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers; or

(e) any Event of Default under the Lease other than an event referred to in § 13.1(A) of the Lease shall have occurred and be continuing; or

(f) an Event of Default under § 13.1(A) of the Lease shall continue for more than six consecutive monthly rental payment dates or shall have occurred on more than 12 such dates during the term of the Lease;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Owner, the Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the Lessee's rights of possession and use under § 4.2 of the Lease, cause the Lease immediately upon such notice to terminate; provided, however, that such termination shall not be in derogation of or impair the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of their respective covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Trustee or the Agent (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an Event of Default under the Lease, and/or (ii) declare ("Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Trustee wherever situated, subject to the provisions of Articles 4 and 22 hereof. The Trustee shall promptly notify the Vendor of any event of which it has knowledge (which shall mean actual knowledge by an officer in the corporate trust department of the Trustee) which constitutes or with the giving of notice or lapse of time or both would constitute an event of default under this Agreement.

16.2. Waiver of Defaults. The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Trustee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this Section, time is of the essence of this Agreement and no such

waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

#### ARTICLE 17. REMEDIES

##### 17.1. Vendor May Take Possession of Equipment.

Subject to the Lessee's rights of possession and use under § 4.2 of the Lease, at any time during the continuance of a Declaration of Default and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment or one or more of the units thereof without liability to return to the Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Trustee, the Lessee or any other person and for such purpose may enter upon the premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment, the Trustee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged or which may have possession thereof to return the unit or units) place such units upon such storage tracks as the Vendor reasonably may designate;

(b) cause such units to be stored on such tracks without charge for insurance, rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the same to be transported to any reason-

able interchange point as directed by the Vendor.

During any storage period, the Trustee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having competent jurisdiction the Vendor shall be entitled to a decree of specific performance hereof. The Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of Equipment in any commercially reasonable manner.

### 17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as provided in Section 17.1 hereof) may retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor shall elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Trustee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee; provided, further, that if the Trustee, the Lessee or any other person notified under the terms of this Section object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise

dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Trustee's Right of Redemption. Subject to the Lessee's rights of possession and use under § 4.2 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon 30 days notice to the Trustee, the Lessee and any other person to whom the law may require notice of the time and place, may sell the Equipment or one or more units thereof, free from all claims of the Trustee, the Lessee or any other party claiming from, through or under the Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Trustee. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be conducted in a commercially reasonable manner. The Vendor, the Trustee and the Lessee may bid for and become

the purchaser of the Equipment or any unit thereof so offered for sale. The Trustee and the Lessee shall be given written notice of such sale or the making of a contract for such sale not less than 30 days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Trustee to purchase or provide a purchaser, within 15 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Trustee or the Lessee (except to the extent of surplus money received as provided in Section 17.7 hereof) and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity not inconsistent herewith, and each power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except that the Vendor shall not retain the Equipment in satisfaction of the CSA Indebtedness except as provided in Section 17.3 hereof. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Trustee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

17.7. Deficiency or Surplus. If there shall



remain any amount due to the Vendor under the provisions of this Agreement after applying all sums of money realized by the Vendor under the remedies herein provided, the Trustee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee. If there shall remain a surplus in the possession of the Vendor after applying as aforesaid all sums realized by the Vendor, such surplus shall be paid to the Trustee.

17.8. Expenses. The Trustee will pay all reasonable compensation and expenses, including reasonable attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable compensation and expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

#### ARTICLE 18. APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or

lease the Equipment or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

#### ARTICLE 19. FILING

The Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Trustee will from time to time perform any other act and will execute, acknowledge, deliver and file any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee will promptly furnish to the Vendor certificates or other evidence of such filing satisfactory to the Vendor.

#### ARTICLE 20. HEADINGS; MODIFICATION OF AGREEMENT

All article and section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement and the Exhibits thereto, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Builder, the Vendor and the Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Trustee and, if such variation or modification shall adversely affect its interests hereunder, by the Builder. Any reference herein to this Agreement or any other agreement shall mean such agreement and all amendments and supplements hereto or thereto then in effect.

## ARTICLE 21. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telexed or mailed to it by first class mail, postage prepaid, at the following address:

(a) to the Builder, at the address specified in Item 1 of Annex A hereto;

(b) to the Trustee, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(c) to the Lessee, at Checkerboard Square, St. Louis, Missouri 63188, attention of Robert W. Lockwood;

(d) to the Agent, at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department;

(e) to any assignee of the Vendor or of the Trustee, at such address as may have been furnished in writing to the Trustee or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

## ARTICLE 22. IMMUNITIES; SATISFACTION OF UNDERTAKINGS

22.1 No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise; all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

22.2 Satisfaction of Certain Covenants. The obligations of the Trustee under Section 7.1 and under Articles 6, 9, 10, 11, 13 (except as set forth in the proviso in Section 13.3), 14 and 19 hereof shall be deemed satisfied

by the Lessee's execution and delivery of the Lease. The Trustee makes no representation or warranty with regard to the due execution or enforceability of the Lease by or against the Lessee and shall not have any responsibility for the Lessee's failure to perform its obligations under the Lease; but if the same shall not be performed, they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof. So long as any CSA Indebtedness remains outstanding, no waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

22.3. No Personal Liability of Trustee. Notwithstanding anything in this Article 22 to the contrary, each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner (except as provided in Section 13.3 hereof) on account of any representation, warranty or agreement herein of the Trustee (except as aforesaid or in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor making claim hereunder may look to said Trust Estate for satisfaction of the same. Nothing contained in this Section 22.3 shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Trustee (provided that neither the Trustee in its fiduciary or individual capacity nor the Owner shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or the Lessee under the Lease.

22.4. No Amendment to Trust Agreement. The Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

#### ARTICLE 23. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303, such additional rights, if any, arising out of the filing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed or in which any unit of Equipment shall be located and such rights, if any, arising out of the marking of Equipment.

#### ARTICLE 24. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

TRINITY INDUSTRIES, INC.,

[Corporate Seal]

by \_\_\_\_\_

Attest:

\_\_\_\_\_  
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, not in its individual  
capacity but solely as Trustee,

[Corporate Seal]

Attest:

FH Gilber  
Corporate Trust Officer

by

[Signature]  
Assistant Vice President

STATE OF TEXAS, )  
 ) ss.:  
 COUNTY OF DALLAS,)

On this            day of            1979, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is            of TRINITY INDUSTRIES, INC., a Texas corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MARYLAND, )  
 ) ss.:  
 CITY OF BALTIMORE,)

On this *17<sup>th</sup>* day of *December* 1979, before me personally appeared *R. E. Schreiber*, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Patricia R. Hilow*  
 Notary Public

[Notarial Seal]

My Commission expires *7-1-82*

## SCHEDULE I

ALLOCATION SCHEDULE OF EACH \$1,000,000 OF CSA  
INDEBTEDNESS PAYABLE IN ONE INTERIM PAYMENT OF  
INTEREST ONLY ON JANUARY 1, 1980, AND 179 MONTHLY  
INSTALLMENTS OF PRINCIPAL AND INTEREST AT A RATE  
OF 11-3/8% PER ANNUM

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
Jan. 1, 1980	-0-	*	*	1,000,000.00
Feb. 1, 1980	11,627.24	9,479.17	2,148.07	997,851.93
Mar. 1, 1980	11,627.24	9,458.80	2,168.44	995,683.49
Apr. 1, 1980	11,627.24	9,438.25	2,188.99	993,494.50
May 1, 1980	11,627.24	9,417.50	2,209.74	991,284.76
June 1, 1980	11,627.24	9,396.55	2,230.69	989,054.07
July 1, 1980	11,627.24	9,375.41	2,231.83	986,802.24
Aug. 1, 1980	11,627.24	9,354.06	2,273.18	984,529.06
Sep. 1, 1980	11,627.24	9,332.51	2,294.73	982,234.33
Oct. 1, 1980	11,627.24	9,310.76	2,316.48	979,917.85
Nov. 1, 1980	11,627.24	9,288.80	2,338.44	977,579.41
Dec. 1, 1980	11,627.24	9,266.64	2,360.60	975,218.81
Jan. 1, 1981	11,627.24	9,244.26	2,382.98	972,835.83
Feb. 1, 1981	11,627.24	9,221.67	2,405.57	970,430.26
Mar. 1, 1981	11,627.24	9,198.87	2,428.37	968,001.89
Apr. 1, 1981	11,627.24	9,175.85	2,451.39	965,550.50
May 1, 1981	11,627.24	9,152.61	2,474.63	963,075.87
June 1, 1981	11,627.24	9,129.16	2,498.08	960,577.79
July 1, 1981	11,627.24	9,105.48	2,521.76	958,056.03
Aug. 1, 1981	11,627.24	9,081.57	2,545.67	955,510.36
Sep. 1, 1981	11,627.24	9,057.44	2,569.80	952,940.56
Oct. 1, 1981	11,627.24	9,033.08	2,594.16	950,346.40
Nov. 1, 1981	11,627.24	9,008.49	2,618.75	947,727.65
Dec. 1, 1981	11,627.24	8,983.67	2,643.57	945,084.08
Jan. 1, 1982	11,627.24	8,958.61	2,668.63	942,415.45
Feb. 1, 1982	11,627.24	8,933.31	2,693.93	939,721.52
Mar. 1, 1982	11,627.24	8,907.78	2,719.46	937,002.06
Apr. 1, 1982	11,627.24	8,882.00	2,745.24	934,256.82
May 1, 1982	11,627.24	8,855.97	2,771.27	931,485.55
June 1, 1982	11,627.24	8,829.71	2,797.53	928,688.02

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\* Interest accrued only.



<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
July 1, 1982	11,627.24	8,803.19	2,824.05	925,863.97
Aug. 1, 1982	11,627.24	8,776.42	2,850.82	923,013.15
Sep. 1, 1982	11,627.24	8,749.39	2,877.85	920,135.30
Oct. 1, 1982	11,627.24	8,722.11	2,905.13	917,230.17
Nov. 1, 1982	11,627.24	8,694.58	2,932.66	914,297.51
Dec. 1, 1982	11,627.24	8,666.78	2,960.46	911,337.05
Jan. 1, 1983	11,627.24	8,638.71	2,988.53	908,348.52
Feb. 1, 1983	11,627.24	8,610.39	3,016.85	905,331.67
Mar. 1, 1983	11,627.24	8,581.79	3,045.45	902,286.22
Apr. 1, 1983	11,627.24	8,552.92	3,074.32	899,211.90
May 1, 1983	11,627.24	8,523.78	3,103.46	896,108.44
June 1, 1983	11,627.24	8,494.36	3,132.88	892,975.56
July 1, 1983	11,627.24	8,464.66	3,162.58	889,812.98
Aug. 1, 1983	11,627.24	8,434.68	3,192.56	886,620.42
Sep. 1, 1983	11,627.24	8,404.42	3,222.82	883,397.60
Oct. 1, 1983	11,627.24	8,373.87	3,253.37	880,144.23
Nov. 1, 1983	11,627.24	8,343.03	3,284.21	876,860.02
Dec. 1, 1983	11,627.24	8,311.90	3,315.34	873,544.68
Jan. 1, 1984	11,627.24	8,280.47	3,346.77	870,197.91
Feb. 1, 1984	11,627.24	8,248.75	3,378.49	866,819.42
Mar. 1, 1984	11,627.24	8,216.72	3,410.52	863,408.90
Apr. 1, 1984	11,627.24	8,184.40	3,442.84	859,966.06
May 1, 1984	11,627.24	8,151.76	3,475.48	856,490.58
June 1, 1984	11,627.24	8,118.82	3,508.42	852,982.16
July 1, 1984	11,627.24	8,085.56	3,541.68	849,440.48
Aug. 1, 1984	11,627.24	8,051.99	3,575.25	845,865.23
Sep. 1, 1984	11,627.24	8,018.10	3,609.14	842,256.09
Oct. 1, 1984	11,627.24	7,983.88	3,643.36	838,612.73
Nov. 1, 1984	11,627.24	7,949.35	3,677.89	834,934.84
Dec. 1, 1984	11,627.24	7,914.49	3,712.75	831,222.09
Jan. 1, 1985	11,627.24	7,879.29	3,747.95	827,474.14
Feb. 1, 1985	11,627.24	7,843.76	3,783.48	823,690.66
Mar. 1, 1985	11,627.24	7,807.90	3,819.34	819,871.32
Apr. 1, 1985	11,627.24	7,771.70	3,855.54	816,015.78
May 1, 1985	11,627.24	7,735.15	3,892.09	812,123.69
June 1, 1985	11,627.24	7,698.25	3,928.99	808,194.70
July 1, 1985	11,627.24	7,661.01	3,966.23	804,228.47
Aug. 1, 1985	11,627.24	7,623.41	4,003.83	800,224.64
Sep. 1, 1985	11,627.24	7,585.46	4,041.78	796,182.86
Oct. 1, 1985	11,627.24	7,547.15	4,080.09	792,102.77
Nov. 1, 1985	11,627.24	7,508.47	4,118.77	787,984.00
Dec. 1, 1985	11,627.24	7,469.43	4,157.81	783,826.19

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
Jan. 1, 1986	11,627.24	7,430.02	4,197.22	779,628.97
Feb. 1, 1986	11,627.24	7,390.23	4,237.01	775,391.96
Mar. 1, 1986	11,627.24	7,350.07	4,277.17	771,114.79
Apr. 1, 1986	11,627.24	7,309.52	4,317.72	766,797.07
May 1, 1986	11,627.24	7,268.60	4,358.64	762,438.43
June 1, 1986	11,627.24	7,227.28	4,399.96	758,038.47
July 1, 1986	11,627.24	7,185.57	4,441.67	753,596.80
Aug. 1, 1986	11,627.24	7,143.47	4,483.77	749,113.03
Sep. 1, 1986	11,627.24	7,100.97	4,526.27	744,586.76
Oct. 1, 1986	11,627.24	7,058.06	4,569.18	740,017.58
Nov. 1, 1986	11,627.24	7,014.75	4,612.49	735,405.09
Dec. 1, 1986	11,627.24	6,971.03	4,656.21	730,748.88
Jan. 1, 1987	11,627.24	6,926.89	4,700.35	726,048.53
Feb. 1, 1987	11,627.24	6,882.33	4,744.91	721,303.62
Mar. 1, 1987	11,627.24	6,837.36	4,789.88	716,513.74
Apr. 1, 1987	11,627.24	6,791.95	4,835.29	711,678.45
May 1, 1987	11,627.24	6,746.12	4,881.12	706,797.33
June 1, 1987	11,627.24	6,699.85	4,927.39	701,869.94
July 1, 1987	11,627.24	6,653.14	4,974.10	696,895.84
Aug. 1, 1987	11,627.24	6,605.99	5,021.25	691,874.59
Sep. 1, 1987	11,627.24	6,558.39	5,068.85	686,805.74
Oct. 1, 1987	11,627.24	6,510.34	5,116.90	681,688.84
Nov. 1, 1987	11,627.24	6,461.84	5,165.40	676,523.44
Dec. 1, 1987	11,627.24	6,412.88	5,214.36	671,309.08
Jan. 1, 1988	11,627.24	6,363.45	5,263.79	666,045.29
Feb. 1, 1988	11,627.24	6,313.55	5,313.69	660,731.60
Mar. 1, 1988	11,627.24	6,263.18	5,364.06	655,367.54
Apr. 1, 1988	11,627.24	6,212.34	5,414.90	649,952.64
May 1, 1988	11,627.24	6,161.01	5,466.23	644,486.41
June 1, 1988	11,627.24	6,109.19	5,518.05	638,968.36
July 1, 1988	11,627.24	6,056.89	5,570.35	633,398.01
Aug. 1, 1988	11,627.24	6,004.08	5,623.16	627,774.85
Sep. 1, 1988	11,627.24	5,950.78	5,676.46	622,098.39
Oct. 1, 1988	11,627.24	5,896.97	5,730.27	616,368.12
Nov. 1, 1988	11,627.24	5,842.66	5,784.58	610,583.54
Dec. 1, 1988	11,627.24	5,787.82	5,839.42	604,744.12
Jan. 1, 1989	11,627.24	5,732.47	5,894.77	598,849.35
Feb. 1, 1989	11,627.24	5,676.59	5,950.65	592,898.70
Mar. 1, 1989	11,627.24	5,620.18	6,007.06	586,891.64
Apr. 1, 1989	11,627.24	5,563.24	6,064.00	580,827.64
May 1, 1989	11,627.24	5,505.76	6,121.48	574,706.16
June 1, 1989	11,627.24	5,447.73	6,179.51	568,526.65

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
July 1, 1989	11,627.24	5,389.16	6,238.08	562,288.57
Aug. 1, 1989	11,627.24	5,330.03	6,297.21	555,991.36
Sep. 1, 1989	11,627.24	5,270.33	6,356.91	549,634.45
Oct. 1, 1989	11,627.24	5,210.08	6,417.16	543,217.29
Nov. 1, 1989	11,627.24	5,149.25	6,477.99	536,739.30
Dec. 1, 1989	11,627.24	5,087.84	6,539.40	530,199.90
Jan. 1, 1990	11,627.24	5,025.85	6,601.39	523,598.51
Feb. 1, 1990	11,627.24	4,963.28	6,663.96	516,934.55
Mar. 1, 1990	11,627.24	4,900.11	6,727.13	510,207.42
Apr. 1, 1990	11,627.24	4,836.34	6,790.90	503,416.52
May 1, 1990	11,627.24	4,771.97	6,855.27	496,561.25
June 1, 1990	11,627.24	4,706.99	6,920.25	489,641.00
July 1, 1990	11,627.24	4,641.39	6,985.85	482,655.15
Aug. 1, 1990	11,627.24	4,575.17	7,052.07	475,603.08
Sep. 1, 1990	11,627.24	4,508.32	7,118.92	468,484.16
Oct. 1, 1990	11,627.24	4,440.84	7,186.40	461,297.76
Nov. 1, 1990	11,627.24	4,372.72	7,254.52	454,043.24
Dec. 1, 1990	11,627.24	4,303.95	7,323.29	446,719.95
Jan. 1, 1991	11,627.24	4,234.53	7,392.71	439,327.24
Feb. 1, 1991	11,627.24	4,164.46	7,462.78	431,864.46
Mar. 1, 1991	11,627.24	4,093.71	7,533.53	424,330.93
Apr. 1, 1991	11,627.24	4,022.30	7,604.94	416,725.99
May 1, 1991	11,627.24	3,950.21	7,677.03	409,048.96
June 1, 1991	11,627.24	3,877.44	7,749.80	401,299.16
July 1, 1991	11,627.24	3,803.98	7,823.26	393,475.90
Aug. 1, 1991	11,627.24	3,729.82	7,897.42	385,578.48
Sep. 1, 1991	11,627.24	3,654.96	7,972.28	377,606.20
Oct. 1, 1991	11,627.24	3,579.39	8,047.85	369,558.35
Nov. 1, 1991	11,627.24	3,503.10	8,124.14	361,434.21
Dec. 1, 1991	11,627.24	3,426.09	8,201.15	353,233.06
Jan. 1, 1992	11,627.24	3,348.35	8,278.89	344,954.17
Feb. 1, 1992	11,627.24	3,269.88	8,357.36	336,596.81
Mar. 1, 1992	11,627.24	3,190.66	8,436.58	329,160.23
Apr. 1, 1992	11,627.24	3,110.68	8,516.56	319,643.67
May 1, 1992	11,627.24	3,029.96	8,597.28	311,046.39
June 1, 1992	11,627.24	2,948.46	8,678.78	302,367.61
July 1, 1992	11,627.24	2,866.19	8,761.05	293,606.56
Aug. 1, 1992	11,627.24	2,783.15	8,844.09	284,762.47
Sep. 1, 1992	11,627.24	2,699.31	8,927.93	275,834.54
Oct. 1, 1992	11,627.24	2,614.68	9,012.56	266,821.98
Nov. 1, 1992	11,627.24	2,529.25	9,097.99	257,723.99
Dec. 1, 1992	11,627.24	2,443.01	9,184.23	248,539.76

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Remaining Principal Balance</u>
Jan. 1, 1993	11,627.24	2,355.95	9,271.29	239,268.47
Feb. 1, 1993	11,627.24	2,268.07	9,359.17	229,909.30
Mar. 1, 1993	11,627.24	2,179.35	9,447.89	220,461.41
Apr. 1, 1993	11,627.24	2,089.79	9,537.45	210,923.96
May 1, 1993	11,627.24	1,999.38	9,627.86	201,296.10
June 1, 1993	11,627.24	1,908.12	9,719.12	191,576.98
July 1, 1993	11,627.24	1,815.99	9,811.25	181,765.73
Aug. 1, 1993	11,627.24	1,722.99	9,904.25	171,861.48
Sep. 1, 1993	11,627.24	1,629.10	9,998.14	161,863.34
Oct. 1, 1993	11,627.24	1,534.33	10,092.91	151,770.43
Nov. 1, 1993	11,627.24	1,438.66	10,188.58	141,581.85
Dec. 1, 1993	11,627.24	1,342.08	10,285.16	131,296.69
Jan. 1, 1994	11,627.24	1,244.58	10,382.66	120,914.03
Feb. 1, 1994	11,627.24	1,146.16	10,481.08	110,432.95
Mar. 1, 1994	11,627.24	1,046.81	10,580.43	99,852.52
Apr. 1, 1994	11,627.24	946.52	10,680.72	89,171.80
May 1, 1994	11,627.24	845.27	10,781.97	78,389.83
June 1, 1994	11,627.24	743.07	10,884.17	67,505.66
July 1, 1994	11,627.24	639.90	10,987.34	56,518.32
Aug. 1, 1994	11,627.24	535.75	11,091.49	45,426.83
Sep. 1, 1994	11,627.24	430.61	11,196.63	34,230.20
Oct. 1, 1994	11,627.24	324.47	11,302.77	22,927.43
Nov. 1, 1994	11,627.24	217.33	11,409.91	11,517.52
Dec. 1, 1994	11,626.70	109.18	11,517.52	.00

ANNEX A  
TO  
CONDITIONAL SALE AGREEMENT

Information Relating to Building of Equipment

- Item 1: TRINITY INDUSTRIES, INC., a Texas corporation, having its address at 4001 Irving Road, Dallas, Texas 75207.
- Item 2: The Builder warrants to the Trustee for a period of one year from the date of shipment f.o.b. plant of manufacture that the units of the Equipment are free of defects in material and workmanship.

THE BUILDER SHALL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR ANY FURTHER LOSS BY REASON OF ANY DEFECT.

This warranty does not cover or apply to any product, accessory, part or attachment which is not manufactured by the Builder.

If the Trustee believes any part of the Equipment to be defective in material or workmanship, the Trustee must give written notice thereof to the Builder at its address specified in this Agreement prior to the expiration of the initial warranty period, specifying details as to date and place of purchase, car number, and alleged defect. The Builder will then give written instructions to the Trustee as to how any defect is to be repaired or replaced. Subject to compliance by the Trustee with the foregoing requirements and provided that the Builder determines the alleged defect to be the result of faulty material or workmanship, the Builder, without charge, will repair any defect in material or workmanship within 120 days after the defective part or Equipment is received by the Builder at the factory from which it was shipped or at such other location specified in writing by the Builder.

THE ABOVE EXPRESS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT AS TO TITLE) AND ALL WARRANTIES,

EXPRESS OR IMPLIED (EXCEPT AS TO TITLE), ARE LIMITED TO ONE YEAR IN DURATION AS SPECIFICALLY PROVIDED ABOVE.

- Item 3: The Builder shall defend any suit or proceedings brought against the Trustee or the Lessee based on a claim that the Equipment or any part thereof furnished hereunder constitutes an infringement of any United States patent, if notified promptly in writing and given authority, information and assistance (at the expense of the Builder) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Trustee or the Lessee. In case the Equipment or any part thereof is in such suit held to constitute infringement and the use of said Equipment or parts is enjoined, the Builder shall, at its own expense, and at its option, either procure for the Trustee and the Lessee the right to continue using said Equipment or parts, or replace same with noninfringing equipment or modify it so it becomes noninfringing, or refund the purchase price. The foregoing states the entire liability of the Builder for patent infringement by the Equipment or any part thereof.

ANNEX B  
TO  
CONDITIONAL SALE AGREEMENT

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plants</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
100 ton 4,750 cubic foot truck gravity- discharge covered hopper cars	LO	As pro- vided in Purchase Order	Oklahoma City, Okla- homa; Long- view, Texas	50	PLMX 11186- PLMX 11235	\$44,695	\$2,234,750	December 1979 F.O.B. point of manufacture

ANNEX C  
to  
Conditional Sale Agreement

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[CS&M Ref. 5566-001]

LEASE OF RAILROAD EQUIPMENT

Dated as of December 1, 1979

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation,

and

RALSTON PURINA COMPANY,  
Lessee.

[Covering 50 4,750 cubic foot Covered Hopper Cars]

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# LEASE OF RAILROAD EQUIPMENT

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\* This Table of Contents has been included for convenience only and does not form a part of this document.

LEASE OF RAILROAD EQUIPMENT dated as of December 1, 1979, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner"), and RALSTON PURINA COMPANY, a Missouri corporation ("Lessee").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC. ("Builder"), pursuant to which the Builder has agreed to manufacture, conditionally sell and deliver to the Trustee the units of railroad equipment described in Appendix A hereto ("Equipment").

The Builder is assigning certain of its interests in the CSA pursuant to an Agreement and Assignment dated as of the date hereof ("CSA Assignment") to ST. LOUIS UNION TRUST COMPANY, acting as agent ("Agent") for THE FRANKLIN LIFE INSURANCE COMPANY ("Original Investor" and, together with its successors and assigns, "Investors") under a Participation Agreement dated as of the date hereof ("Participation Agreement") between the Lessee, the Agent, the Owner, the Trustee and the Original Investor.

The Lessee will lease from the Trustee such units of Equipment as are delivered and accepted and settled for under the CSA ("Units") upon the terms and conditions hereinafter provided. The Trustee will assign certain of its rights under this Lease for security to the Agent pursuant to an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement substantially in the form attached to the Lease Assignment ("Consent").

In consideration of the agreements hereinafter set forth, the Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

#### § 1. NET LEASE

This Lease is a net lease. Each of the Lessee's obligations to pay all rentals and other amounts hereunder

shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including but not limited to abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Trustee or the Owner under this Lease or the CSA or otherwise including the Lessee's rights by subrogation thereunder against the Builder, the Agent or otherwise (and including any claims of the Lessee against Railcar Service, Inc., pursuant to the service contract covering the Units); nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Trustee or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Builder, the Trustee, the Owner or the Agent for any reason whatsoever.

## § 2. DELIVERY AND ACCEPTANCE OF UNITS

The Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the CSA. Each delivery of a Unit to the Trustee under the CSA

shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States at which such Unit is so delivered to the Trustee. Upon such delivery, the Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Trustee under the CSA and on behalf of itself hereunder and to execute and deliver to the Trustee a certificate of acceptance ("Certificate of Acceptance") in accordance with the provisions of Article 3 of the CSA, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease; provided, however, that the delivery, inspection and acceptance hereunder of any unit of Equipment excluded from the CSA pursuant to Section 3.3 thereof or Section 4 of the CSA Assignment shall be ineffective to subject such unit to this Lease. The Lessee hereby represents and warrants to the Trustee that no Unit shall be put into service earlier than the date of delivery to and acceptance by the Lessee or its agent as agent for the Trustee hereunder.

### § 3. RENTALS

3.1. Amount and Date of Payment. The Lessee agrees to pay to the Trustee, as rental for each Unit subject to this Lease, (a) one interim rental payment on the Closing Date (as defined in Section 4.2 of the CSA) and (b) thereafter 180 consecutive monthly payments, in advance, commencing on January 1, 1980, and payable on the first day of each of the 179 months thereafter. The interim rental payment for each Unit subject to this Lease shall be in an amount equal to 0.0285% of the Purchase Price (as defined in Section 4.1 of the CSA) of such Unit for each day elapsed from and including the date of acceptance thereof to but not including January 1, 1980. The 180 monthly rental payments for each Unit subject to this Lease shall each be in an amount equal to 0.8831% of the Purchase Price of such Unit.

3.2. Payment on Nonbusiness Day. If any of the rental payment dates referred to in § 3.1 is not a business day, the rental payment otherwise payable on such date shall be payable on the succeeding business day. The term

"business day" as used herein means any calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, St. Louis, Missouri, or New York, New York, are authorized or obligated to remain closed.

3.3. Instructions To Pay Agent and Trustee. Upon execution and delivery of the Lease Assignment and until the Agent shall have advised the Lessee in writing that all sums due from the Trustee under the CSA have been fully satisfied and discharged, the Trustee irrevocably instructs the Lessee and the Lessee agrees to make all the payments provided for in this Lease to the Agent (other than payments not assigned to the Agent under the Lease Assignment), for the account of the Trustee, in care of the Agent, with instructions to the Agent (a) first to apply such payments to satisfy the obligations of the Trustee under the CSA known to the Agent to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to the Trustee or to the order of the Trustee in immediately available funds at such place as the Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Agent in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to § 7 hereof shall be made to the Trustee in immediately available funds in the manner provided in § 3.4 hereof.

3.4. Payment in Immediately Available Funds. The Lessee agrees to make each payment provided for herein as contemplated by § 3.1 hereof in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

#### § 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance thereof pursuant to § 2 hereof and, subject to the provisions of §§ 7, 13 and 16 hereof, shall terminate on December 31, 1994. The obligations of the Lessee hereunder (including but not limited to the obligations under §§ 6, 7, 10, 11, 12 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. All rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the CSA. If an event of default should occur under the CSA, the Vendor may terminate this Lease (or rescind its termination) without affecting the indemnities which by the provisions of this Lease survive the termination of its term; provided, however, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Agent is entitled to apply the Payments (as defined in the Lease Assignment) in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession and use provided under § 15 hereof.

#### § 5. IDENTIFICATION MARKS

The Lessee will, at its own expense, cause each Unit to be kept numbered with the identification number set forth in Appendix A hereto or, in the case of any Unit not there listed, such identification number as shall be set forth in any supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Trustee's title to and the Agent's security interest in such Unit. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on each side thereof and will replace promptly any such words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Agent and the Trustee and filed by the Lessee in all public offices where this Lease and the CSA shall have been filed and (ii) the Lessee shall have furnished the Agent and the Trustee an opinion of counsel to the effect that such statement has been so filed, such filing will protect the Agent's and the Trustee's interests in such Units and no filing with or giving of notice to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Agent and the Trustee in such Units.

The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

#### § 6. GENERAL TAX INDEMNIFICATION

The Lessee assumes responsibility for and agrees to pay and agrees to protect, save, keep harmless and indemnify the Trustee, the Owner and the Agent and their successors and assigns ("Indemnified Persons") against all taxes, assessments, fees, withholdings and other governmental charges of any nature whatsoever, including without limitation penalties and interest (all such taxes, assessments, fees, withholdings, governmental charges, penalties and interest called "Taxes"), imposed on, incurred by or asserted against any Indemnified Person or any Unit in whole or in part on account of or with respect to this Lease or the CSA or any document referred to herein or therein or any of the transactions contemplated hereby or thereby or the manufacture, purchase, acceptance or rejection of the Units or any portion thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, transfer of title, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any portion thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for any Federal, state and local taxes measured by net income based upon the Trustee's receipt of payments provided for herein (other than payments due the Trustee under this § 6 for which the Trustee is entitled to a corresponding deduction in the calculation of its net income) and franchise and value added taxes which are in lieu of such net income taxes. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify each Indemnified Person to the extent required by this § 6 within 10 days after receipt of a written request by such Indemnified Person for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that the Lessee shall not be required to pay any Taxes so long as it is contesting such taxes in good faith and by appropriate legal or administrative proceedings and the nonpayment thereof does not, in the

reasonable opinion of the Trustee or the Agent, adversely affect the title, property or rights of the Trustee hereunder or the Agent under the CSA. The Lessee agrees to give the Trustee and the Agent notice of such contest within 30 days after institution thereof and the Trustee agrees to provide such information as may be reasonably requested by the Lessee in furtherance of such contest. If any Tax shall have been charged or levied against the Trustee directly and paid by the Trustee, the Lessee shall reimburse the Trustee on presentation of an invoice therefor.

In the event that the Trustee shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, the Lessee shall upon demand pay such additional amounts (which shall also be deemed Taxes hereunder) to the Trustee as will enable the Trustee to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Trustee and the Agent in such Units; provided, however, that to the extent permitted by law, the Lessee shall file such returns, statements and reports relating to sales or use taxes and taxes, fees and charges on or measured by the Trustee's earnings or gross receipts arising from the Units or the value added by the Trustee thereto with respect to any state of the United States or political subdivision thereof as the Lessee shall determine are required to be filed and as shall be prepared by the Lessee, and shall promptly pay such taxes, fees and charges when due. To the extent that the Trustee has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee, and, if necessary, the Trustee will request from the appropriate taxing authorities the information that the Lessee deems necessary in filing such tax reports or in appealing any tax assessments.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 6, the Trustee hereby authorizes the Lessee to act in the name of the Trustee and on its behalf; provided, however,



that the Lessee shall indemnify and hold the Trustee harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of or incident to any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Trustee, submit to the Trustee copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Trustee of the Lessee's performance of its duties under this § 6. The Lessee shall also furnish promptly upon request such data as the Trustee reasonably may require to permit its compliance with the requirements of taxing jurisdictions.

The Lessee covenants and agrees to pay all amounts due under this § 6 free of any Taxes and to indemnify each Indemnified Person against any Taxes imposed by reason of any payment made by the Lessee so that the Indemnified Person to whom or for whose benefit the payment is made shall receive an amount which, net of any Taxes or other charges required to be paid by such Indemnified Person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

All of the obligations of the Lessee under this § 6 shall survive and continue, notwithstanding the expiration of this Lease.

#### § 7. CASUALTY OCCURRENCES; INSURANCE; ECONOMIC OBSOLESCENCE

7.1. Definition of Casualty Occurrence; Payments.  
In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged from any cause whatsoever or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or for an indefinite period, or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days prior to the return of such Unit in the manner set forth in § 14 or 17 hereof (each such occurrence called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Trustee and the Agent with respect thereto. On the next succeeding rental payment date (each such date called a "Casualty Payment Date"), the Lessee shall

pay to the Trustee a sum equal to the Casualty Value (as defined in § 7.5 hereof) of any such Unit as of such Casualty Payment Date, plus the rental in respect of such Unit accrued as of such Casualty Payment Date. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Trustee shall be entitled to recover possession of such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 17 hereof, the Lessee shall promptly and fully notify the Trustee with respect thereto and pay to the Trustee (in addition to any amounts due pursuant to § 17 hereof) an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 20% of the Purchase Price of such Unit. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Trustee shall be entitled to recover possession of such Unit.

7.2. Requisition by United States Government. In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred and in the event of termination of this Lease, the Lessee will comply with all provisions of § 14 or 17 hereof, as the case may be, except that the Lessee will not be obligated to return such Unit until return thereof to the Lessee. All payments received by the Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to or retained by the Lessee; provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing. All payments received by the Trustee or the Lessee after the term of this Lease or any renewal thereof shall be paid over to or retained by the Trustee.

7.3. Lessee Agent for Disposal. The Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of the Lease at the best price obtainable on an "as is, where is" basis. Provided that the

Lessee has previously paid the Casualty Value to the Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Trustee.

7.4. Amount of Casualty Value. The Casualty Value of each Unit as of the Casualty Payment Date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix B hereto opposite the numbered Casualty Payment Date next succeeding the actual date of such Casualty Occurrence or, if there is no such numbered Casualty Payment Date, the last rental payment date; but in no event shall such amount be less than the "Casualty Value" (as defined in Section 7.3 of the CSA) as of such Casualty Payment Date.

7.5. No Release. Except as provided in this § 7, the Lessee shall not be released from its obligations hereunder in the event of any Casualty Occurrence, and shall bear the risk of any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

7.6. Insurance To Be Maintained. (a) The Lessee will at all times prior to the return of the Equipment to the Trustee, at its own expense, cause to be carried and maintained public liability insurance providing coverage of not less than \$10,000,000 with respect to third-party personal injury and property damage and may, at its option, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto; provided, however, that if, in the reasonable opinion of the Trustee or the Agent, the Lessee's financial condition has materially changed from its condition as of the date hereof such that property insurance is required to assure the Lessee's ability to meet its obligations under this Lease, the Trustee or the Agent shall so notify the Lessee and the Lessee shall promptly arrange for such insurance to be carried and maintained. The Lessee will carry such insurance in such amounts, for such risks, with such deductibles and with such insurance companies, satisfactory to the Trustee and the Agent and in any event consistent with prudent industry practice and at least comparable in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units. The proceeds of any such insurance shall be payable to the Agent, the Trustee and the Lessee, as their respective interests may appear, so long as the indebtedness, if any, evidenced by the CSA shall not

have been paid in full, and thereafter to the Trustee and, so long as there is no Event of Default hereunder, the Lessee as their respective interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancelation, expiration or other material change in coverage to the Trustee and the Agent and (ii) waive any right to claim any premiums or commissions against the Trustee, the Owner and the Agent. In the event such policies shall contain breach of warranty provisions, such policies shall provide that in respect of the interests of the Trustee, the Owner and the Agent in such policies the insurance shall not require contributions from other policies held by the Trustee, the Owner or the Agent and shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Trustee, the Owner and the Agent, respectively) and shall insure the Trustee, the Owner and the Agent regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Trustee, the Owner or the Agent, respectively). Prior to the first date of delivery of any Unit pursuant to the CSA, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this § 7, the Lessee shall deliver to the Trustee certificates issued by the insurer(s) for the insurance maintained pursuant to this § 7; provided, however, that if the delivery of any certificate is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the certificate upon receipt thereof.

(b) In the event that the Lessee shall fail to maintain insurance as herein provided, the Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand, reimburse the Trustee for the cost thereof together with interest on the amount of such cost at the rate per annum specified in § 19 hereof.

(c) Notwithstanding the above, the Trustee may (but shall not be obligated to) provide casualty insurance at its own expense in amounts which are in excess of the Casualty Value and which policies may name the Trustee as the loss payee. If the Trustee exercises said option, then the Lessee will cooperate with the reasonable requests of the Trustee so as to effect this insurance coverage; it being understood that any insured coverage under this sub-

section (c) is expressly within the Trustee's option and in no way relieves the Lessee from any of its responsibilities under this § 7.6.

7.7. Insurance Proceeds and Condemnation Payments.

If the Trustee shall receive (directly or from the Agent) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Trustee shall pay the same to the Lessee up to an amount equal to the Casualty Value with respect to any Unit theretofore paid by the Lessee and any balance shall remain the property of the Trustee; provided, however, that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value and accrued rentals in respect of such Units to the Trustee. All insurance proceeds received by the Trustee (directly or from the Agent) in respect of any damage to any Unit not constituting a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Trustee that the damage to such Unit in respect of which such proceeds were paid has been fully repaired.

7.8. Economic Obsolescence. If the Lessee shall, in its reasonable judgment, determine that the Units have become economically obsolete in the Lessee's business ("Economic Obsolescence"), the Lessee shall have the right, at its option and on at least 180 days' prior written notice to the Trustee, to terminate this Lease as to all Units then subject hereto (subject to the survival of the obligations described in § 4.1 hereof) as of any succeeding rental payment date specified in such notice ("Termination Date"); provided, however, that (i) the Termination Date shall not be earlier than January 1, 1990, (ii) no Event of Default or other event which after lapse of time or notice or both would become an Event of Default shall have occurred and be continuing and (iii) on such Termination Date such Units shall be in the same condition as if being redelivered pursuant to § 14.1 hereof.

During the period from the date of such notice until the fifth business day preceding the Termination Date, the Lessee shall use its best efforts to obtain bids for the purchase of such Units, and the Lessee shall at least five business days prior to the Termination Date certify to the Trustee the amount of each such bid and the name and address of the party (which shall not be a corporation or individual affiliated with the Lessee or any party from whom the Lessee or any such affiliate intends thereafter to lease such Units) submitting such bid. On the Termination Date the Trustee

sell such Units for cash to the bidder who shall have submitted the highest bid therefor. The total sale price realized at such sale shall be retained by the Trustee.

On the Termination Date, the Lessee shall pay to the Trustee the excess, if any, of the Casualty Value for such Units (computed as of the previous rental payment date) over the sale price of such Units after the deduction of all expenses incurred by the Trustee in connection with such sale ("Termination Value") (in addition to the rental payment due on such Termination Date). In no event shall the sum of such sale proceeds and the Termination Value hereunder paid to the Trustee be less than the amount required to pay in full the outstanding CSA Indebtedness with respect to such Units, including accrued interest thereon.

If no sale shall occur on the date scheduled therefor as provided, this Lease shall continue in full force and effect without change unless and until the Lessee pays the Trustee an amount equal to the Termination Value and returns the Units to the Trustee pursuant to § 17 hereof; provided, however, that the Lessee, on behalf of the Trustee, may attempt to sell the Units at some later date upon 180 days' prior written notice to the Trustee and following the procedure set forth above.

In the event of any such sale and the receipt by the Trustee of the amounts above described, the obligation of the Lessee to pay rent pursuant to § 3 hereof in respect of such Units on each rental payment date shall continue to and including the Termination Date but shall then terminate. The Trustee shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action or incur any cost or expense in connection with any sale pursuant to this § 7.8 other than to transfer or to cause to be transferred all of the Trustee's right, title and interest in and to such Units to the purchaser named in the highest bid certified by the Lessee to the Trustee as above provided. Any sale pursuant to this § 7.8 shall be free and clear of all of the Lessee's rights to such Units, but otherwise shall be made without warranties other than against the Trustee's acts.

If the Lessee shall exercise its option to terminate under this § 7.8, the Trustee may, notwithstanding such election by the Lessee, by written notice to the Lessee given

90 days after the termination notice is given to the Trustee, elect to retain the Units then subject to this Lease, in which case the Lessee shall not be obligated to pay the Termination Value to the Trustee; provided, however, that this Lease shall not terminate as to such Units unless the CSA Indebtedness in respect of such Units is prepaid on the Termination Date pursuant to Article 7 of the CSA. In the event the Trustee shall so elect to retain such Units, the Lessee shall assemble and deliver such Units to the Trustee in accordance with the provisions of § 17 hereof.

#### § 8. REPORTS

On or before March 31 in each year, commencing with the calendar year 1981, the Lessee will furnish to the Trustee, the Owner and the Agent an accurate statement stating (a) as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder and covered by the CSA and of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Trustee or the Agent may reasonably request and (b) in the case of all Units repainted or repaired during the period covered by such statement, that the numbers and markings required by § 5 hereof have been preserved or replaced. The Trustee and the Agent shall each have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as they may request during the continuance of this Lease.

#### § 9. DISCLAIMER OF WARRANTIES

NEITHER THE TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE TRUSTEE NOR THE OWNER MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER

REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Trustee, the Owner and the Lessee, are to be borne by the Lessee; but the Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Trustee or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Trustee may have against the Builder; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Trustee may (but shall not be obligated to) assert and enforce such claims and rights at the Lessee's sole cost and expense. The Trustee and the Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Trustee, the Owner or the Agent based on any of the foregoing matters.

#### § 10. APPLICABLE LAWS

10.1. Compliance. The Lessee agrees, for the benefit of the Trustee, the Owner and the Agent, to comply in all respects (including without limitation the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the



title, operation or use of the Units (all such laws and rules to such extent called "Applicable Laws"), and in the event that the Applicable Laws require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may upon written notice to the Trustee and the Agent, at its own expense, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Trustee or the Agent, adversely affect the property or rights of the Trustee or the Agent under this Lease or under the CSA.

10.2. Reports for Trustee and Agent. The Lessee agrees to prepare and deliver to the Trustee and the Agent at its own expense within a reasonable time prior to the required date of filing (or, to the extent permissible, file on their behalf) any and all reports (other than income tax returns) to be filed by the Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Trustee or the Agent of the Units or the leasing thereof to the Lessee.

## § 11. MAINTENANCE AND ACCESSIONS

11.1. Units in Good Operating Order. The Lessee, at its own cost and expense, will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted, and eligible for railroad interchange in accordance with the Applicable Laws.

11.2. Additions and Accessions. (1) Except as set forth in §§ 10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units) which shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with § 11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit, whether or not installed or added to such Unit in contravention of § 11.2(1) hereof, (ii) the cost of which is

included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit in railroad interchange by the Applicable Laws shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the CSA) shall immediately be vested in the Trustee and the Agent as their respective interests may appear in the Unit.

## § 12. INDEMNIFICATION

12.1. Indemnified Persons. The Lessee shall pay and shall protect, indemnify and hold harmless the Trustee (in both its individual and fiduciary capacities), the Owner, the Agent and their respective successors, assigns, agents and servants ("Indemnified Persons") from and against any and all causes of action, suits, penalties, claims, demands or judgments of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements or expenses relating thereto, including without limitation the attorneys' fees and expenses of any Indemnified Person) in any way relating to or arising or alleged to arise out of this Lease, the CSA or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent and other defects whether or not discoverable by the Indemnified Person or the Lessee; (iii) any claim for patent or trademark infringement; (iv) any claims based on strict liability in tort; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner arising or alleged to arise out of the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Indemnified Person, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, except to the extent any such violation arises

from the gross negligence or wilful misconduct of the Trustee; or (vii) any claim arising out of any of the Trustee's obligations under the Lease Assignment or the Agent's retention of a security interest under the CSA or the Lease Assignment or the Participation Agreement (all such matters called "Indemnified Matters"), except to the extent such claim arises from the gross negligence or wilful misconduct of such Indemnified Person. The Lessee shall be obligated under this § 12.1, whether or not any Indemnified Person shall also be indemnified with respect to any Indemnified Matter under any other agreement by any other person, and the Indemnified Person may proceed directly against the Lessee under this § 12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any Indemnified Matter, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense defend such action, suit or proceeding, or cause the same to be defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any indemnification under this § 12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Trustee each agrees to give the other promptly upon obtaining knowledge thereof written notice of any claim hereby indemnified against. Upon the payment in full by the Lessee of any indemnities as contained in this § 12; and provided that no Event of Default (or other event which with notice or lapse of time or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of such Indemnified Matter. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any Indemnified Matter shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for its indemnification payments previously made.

#### 12.2. Indemnification of Third-Party Beneficiaries.

The Lessee further agrees to indemnify, protect and hold harmless the Trustee, the Investors, the Agent, the Owner and the Builder as third-party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against any such party because of the use in or about the construction or operation of any unit of Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder under the CSA.

12.3. Survival. The indemnities contained in this § 12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of and shall be enforceable by any Indemnified Person. None of the indemnities in this § 12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

12.4. No Guarantee by Lessee. Nothing in this § 12 shall constitute a guarantee by the Lessee of the CSA Indebtedness (as defined in the CSA) or a guarantee of the residual value of any Unit.

### § 13. DEFAULT

13.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event an "Event of Default") shall occur:

(A) (1) default shall be made in payment of any amount provided for in § 3 hereof, and such default shall continue for 5 days; or (2) default shall be made in payment of any amount provided in § 7 or 17 hereof, and such default shall continue for 5 days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or of the right to possession of any Units;

(C) default shall be made in the observance or performance of any other covenant, condition or agreement on the part of the Lessee contained herein, in the Participation Agreement or the Consent (as defined in the Participation Agreement) and such default shall continue for 20 days after written notice from the Trustee or the Agent to the Lessee specifying the default and demanding that the same be remedied;

(D) any representation or warranty made by the Lessee herein, in the Participation Agreement or in any certificate or statement furnished to the Trustee pursuant to or in connection with any such agreement proves untrue in any material respect as of the date of making thereof;

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and the Consent shall not have been and shall not continue to be duly assumed in writing within 60 days after such petition shall have been filed, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes or might result in any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and, unless

such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to be duly assumed in writing within 60 days after such proceedings shall have been commenced, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers;

then, in any such case, the Trustee, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof (including without limitation after-tax losses of income tax benefits); or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Trustee, subject to the applicable provisions of law, may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and possess the same free from any right of the Lessee or its successors or assigns to use the Units for any purposes whatever, without penalty; but the Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as liquidated damages for

loss of a bargain and not as a penalty whichever of the following amounts that the Trustee in its sole discretion shall specify, (i) the sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Trustee reasonably estimates to be obtainable for each Unit during such period (such present value to be computed in each case on the basis of a 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated) or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, which the Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Trustee reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Trustee shall have sold any Unit, the Lessee shall, if the Trustee shall so elect, pay to the Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

13.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of the Trustee shall not be deemed exclusive, but shall be cumulative and may be

exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. Failure To Exercise Rights Is Not Waiver.

The failure or delay of the Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

13.4. Notice of Event of Default.

The Lessee agrees to furnish written notice to the Trustee and the Agent, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which after notice or lapse of time or both would constitute such an Event of Default, specifying such condition and the nature and status thereof. A "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee contained in this Lease, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

**§ 14. RETURN OF UNITS UPON DEFAULT**

14.1. Return of Units.

If this Lease shall terminate pursuant to § 13 hereof or Article 16 of the CSA, the Lessee shall forthwith deliver possession of the Units to the Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, shall comply with all Applicable Laws then in effect and shall have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in § 11 hereof, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as



above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) place such Units upon such storage tracks as the Trustee reasonably may designate;

(b) cause such Units to be stored on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Trustee; and

(c) cause the same to be transported to any reasonable interchange point as directed by the Trustee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own cost and expense, insure, maintain and keep the Units in good order and repair and will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Trustee and, if received by the Lessee, shall be promptly turned over to the Trustee. In the event any Unit is not assembled, delivered and stored as hereinabove provided within 30 days after such termination, the Lessee shall in addition pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the percentage of the Purchase Price of such Unit for each such day (obtained by dividing the basic lease rate as set forth in § 3.1 hereof for each monthly payment for such Unit by 30) exceeds the actual earnings received by the Trustee on such Unit for each such day. Such payment shall not offset the obligation of the Lessee to redeliver the Equipment pursuant to the first sentence of this section.

14.2. Trustee Appointed Agent of Lessee. Without limiting the obligations of the Lessee under the foregoing sections, the Lessee hereby irrevocably appoints the Trustee

as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be in possession of such Unit.

§ 15. ASSIGNMENT, POSSESSION AND USE

15.1. Assignment; Consent. This Lease shall be assignable in whole or in part by the Trustee without the consent of the Lessee. The Lessee hereby acknowledges the assignment of this Lease pursuant to the Lease Assignment.

15.2. Lessee's Rights To Use the Units. (1) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease. The Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Trustee and the Agent, except as provided in paragraph (2) of this § 15.2; and the Lessee shall not part with the possession or control of or allow to pass out of its possession or control any of the Units without the prior written consent of the Trustee and the Agent, except as provided in said paragraph (2). The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which if unpaid might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Trustee or the Agent or resulting from claims against the Trustee or the Agent not related to the ownership of the Units upon or with respect to any Unit, including any accession thereto, or the interest of the Trustee, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; provided, however, that the Lessee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent and the Trustee, materially adversely affect the interest of the Agent or the Trustee in the Equipment, the Agent's interest in the income and proceeds from the Equipment or otherwise under this Lease or the CSA.

(2) So long as no Event of Default exists hereunder and subject to § 4.2 hereof, the Lessee shall be

entitled to the possession and use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which any of their railroad equipment is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to sublease the Units, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that the Lessee shall not assign, sublease or use or permit the assignment, sublease or use of any Unit predominantly outside the United States. Any sublease permitted by this paragraph shall be expressly subordinate to the rights and remedies of the Agent under the CSA and the Trustee under this Lease in respect of the Units covered by such sublease.

### 15.3. Merger, Acquisition or Consolidation.

Nothing in this § 15 shall be deemed to restrict the right of the Lessee to assign its leasehold interest under this Lease or possession of the Units to any corporation incorporated under the laws of any state of the United States or the District of Columbia into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety and which shall have duly assumed the obligations of the Lessee hereunder; provided that such assignee will not, upon the effectiveness thereof, be in default under any provision of this Lease.

## § 16. RENEWAL OPTIONS

16.1. Renewal for Successive Period. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Trustee not less than 90 days nor more than 270 days prior to the end of the original term of this Lease elect to extend such original term of this Lease in respect of all but not less than all the Units then covered by this Lease for a period of 5 years or such other time acceptable to both the Lessee and Trustee commencing on the scheduled expiration of such original term of this Lease, at a "Fair Market Rental" payable monthly in advance on the first day of each month in each year of such extended term. In the event of any such renewal, the Casualty Value payable

in respect of a Casualty Occurrence involving any Unit shall be as agreed upon by the Trustee and the Lessee.

16.2. Determination of Fair Market Rental.

(1) The Fair Market Rental for each extended term of this Lease shall be equal to the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and costs of removal from the location of current use shall not be a deduction from such rental.

(2) If, after 45 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, either party to such determination may give written notice to the other requesting determination of such value by an appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply to make such appointment to the American Arbitration Association and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If 3 appraisers shall be appointed, the determination of the appraiser which differs most from the other 2 appraisers shall be excluded, the remaining 2 determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any

judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§ 17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, deliver possession of such Unit to the Trustee upon such storage tracks as the Trustee may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Trustee to store such Unit on such tracks for a period not exceeding 6 months and transport the same, at any time within such 6-month period, to any reasonable place or to any connecting carrier for shipment, all as directed by the Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. Upon delivery pursuant to the preceding sentence, the Lessee shall be absolved of any further responsibility for such Units. During any such storage period the Lessee will permit the Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this sentence. Each Unit returned to the Trustee pursuant to this § 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet all standards of the Applicable Laws then in effect and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in § 11 hereof and have removed therefrom any such device not so considered an accession. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having competent jurisdiction, the Trustee shall be entitled to a decree against the Lessee requiring specific performance thereof. The Lessee shall be required to pay to the Trustee rent for each day any Unit is not so returned in an amount equal to 0.0285% of the Purchase Price of such Unit for each day from the expiration of the Lease to the date such Unit is returned.

In the event any Unit is not assembled, delivered, stored and transported, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Trustee for each day thereafter an amount equal to the amount, if any, by which the per diem interchange for such Unit for each such day exceeds the actual earnings received by the Trustee on such Unit for each such day, unless the Trustee shall have received such per diem.

#### § 18. FILING

The Lessee, at its own expense, will cause this Lease, the CSA, the CSA Assignment and the Lease Assignment to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 prior to the delivery and acceptance of any Unit hereunder, and will undertake the filing required of the Trustee under the CSA; provided, however, that the Lessee shall be entitled to rely on advice from special counsel for the Agent that such filing has occurred. The Lessee will from time to time perform any other act and will execute, acknowledge, deliver and file (and will refile whenever required) any and all further instruments required by law or reasonably requested by the Trustee or the Agent for the purpose of proper protection, to their satisfaction, of their respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish to the Agent and the Trustee evidence of all such filing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Trustee.

#### § 19. INTEREST ON OVERDUE RENTALS

The Lessee shall promptly pay, to the extent legally enforceable, an amount equal to the interest at 12-3/8% per annum on any overdue rentals and other obligations due hereunder for the period of time during which they are overdue.

#### § 20. INCOME TAXES

§ 20.1. Tax Assumptions. This Lease and the CSA have been entered into on the assumptions that (A) the Owner,

as the beneficial owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof ("Code"), to an owner of property, including without limitation (1) the maximum depreciation deduction with respect to the Units authorized under section 167 of the Code ("ADR Deduction") (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, for property in Asset Guideline Class No. 00.25, in accordance with the Class Life Asset Depreciation Range System described in section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining-balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum-of-the-years-digits method of depreciation when most beneficial to the Trustee, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under section 1012 of the Code ("Basis") and (d) taking into account a salvage value, after the reduction allowed by section 167(f) of the Code, of zero, (2) deductions with respect to interest payable under the CSA pursuant to section 163 of the Code ("Interest Deduction") and (3) the 10% investment credit with respect to 100% of the Basis of the Units ("Investment Credit") pursuant to section 38 and related sections of the Code and (B) all amounts includible in gross income by the Trustee or the Owner with respect to this Lease will be treated as income from sources within the United States.

#### 20.2. Lessee's Representations and Agreements.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by the Trustee or the Owner, and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying by the Trustee, and will on written request by the Trustee provide the Trustee with such records as will enable the Owner to determine whether it is entitled (A) to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units and (B) to treat amounts includible

in gross income with respect to this Lease as income from sources within the United States.

The Lessee represents and warrants that (i) all the Units constitute property the entire Basis of which qualifies for the 10% Investment Credit under section 50 of the Code; (ii) at the time the Trustee becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of section 48(b) of the Code, and at the time the Trustee becomes the owner of the Units, the units will not have been used by any person so as to preclude "the original use of such property" within the meaning of sections 48(b) and 167(c)(2) of the Code from commencing with the Trustee; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of section 48(a) of the Code; (iv) none of the units will be "used predominantly outside the United States" within the meaning of section 48(a)(2) of the Code; and (v) all items includible in gross income by the Trustee or the Owner with respect to this lease are entitled to treatment as income from sources within the United States.

20.3. Indemnification. If, for any reason whatsoever (other than for the reasons set forth below), all or any part of the ADR Deduction, the Interest Deduction or the Investment Credit with respect to any Unit shall be unavailable in computing each of the items of income, gain, loss, deduction or credit of the Owner or the Trustee, or the Owner shall determine that all amounts includible in gross income with respect to this Lease cannot be treated as income from sources within the United States for any taxable year (or portion thereof) during which this Lease is in effect as the result of the location of any Unit outside the United States, the rental applicable to such Unit set forth in § 3 shall, on the next succeeding rental payment date after written notice to the Lessee by the Trustee of such fact, be increased by such amount as shall be required, in the reasonable opinion of the Owner, to cause the Owner's net after-tax annual cash flow and net after-tax rate of return to be at least the same as such net after-tax annual cash flow and net after-tax rate of return would have been had the ADR Deduction, the Interest Deduction and the Investment Credit been wholly available and had the Trustee and the Owner been entitled to treat all amounts includible in gross income with respect to this Lease as income from sources within the United States; provided, however, that such rental shall not be so increased to the extent that the



ADR Deduction, the Interest Deduction or the Investment Credit with respect to such Unit is unavailable as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Trustee the amounts stipulated pursuant to § 7 hereof;

(ii) a voluntary transfer by the Trustee of legal title to such Unit, a voluntary disposition by the Trustee of any interest in such Unit or a voluntary reduction by the Trustee of its interest in the rentals from such Unit under this Lease (except pursuant to an assignment of this Lease to the Agent) unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the failure of the Owner to claim the ADR Deduction, the Interest Deduction or the Investment Credit on its income tax return for the appropriate year, unless the Owner shall have received an opinion of independent tax counsel to the effect that the Owner is not entitled to claim the ADR Deduction, the Interest Deduction or the Investment Credit; or

(iv) the failure of the Owner to have sufficient liability for Federal income tax against which to credit the Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction.

20.4. Adjustment of Rentals. If, for any reason whatsoever, all or any part of the cost of any improvement and/or addition to a Unit or any expenditure by the Lessee in respect of any Unit or this Lease ("Additional Expenditures") made by the Lessee under and pursuant to the terms of this Lease or otherwise is required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes at any time prior to the time such Unit is disposed of in a taxable transaction, then the rentals of the Unit set forth in § 3 hereof shall, on the next succeeding rental payment date after the date on which the Lessee is required to furnish written notice to the Trustee pursuant to the following sentence that such inclusion in the Trustee's or the Owner's gross income is required, be increased to such amount or amounts as shall, in the reasonable opinion of the Owner (after taking into account any present or future tax benefits that the Owner reasonably anticipates it will

derive from its additional investment in the Units by reason of such inclusion, including without limitation any current deductions, future depreciation deductions and investment tax credit), cause the Owner's net after-tax annual cash flow and net after-tax rate of return (calculated on the same basis as used by the Owner in originally evaluating this transaction) to equal the net after-tax annual cash flow and net after-tax rate of return that would have been realized by the Owner if the cost of such Additional Expenditures had not been includible in the Owner's gross income. The Lessee agrees that, within 30 days after the close of any calendar year (or in the event the Trustee or the Owner gives the Lessee written notice that the Trustee's or the Owner's taxable year closes on a date specified therein other than December 31, within 30 days after said date) in which the Lessee has made Additional Expenditures which are required to be included in the gross income of the Trustee or the Owner for Federal income tax purposes prior to the time such Unit is disposed of in a taxable transaction, the Lessee will give written notice thereof to the Trustee and the Owner describing such Additional Expenditures in reasonable detail.

20.5. Adjustment of Casualty Values. In the event the rental rates shall be adjusted as hereinbefore provided, the Casualty Values set forth in § 7 hereof shall be adjusted accordingly.

20.6. IRS Ruling. The Trustee and the Owner are entitled, but are not required, to request a ruling from the Internal Revenue Service ("Ruling") to the effect, among other things, that this Lease is a true lease, that the Trustee is the owner of the Units and that the Owner has the right to claim the ADR Deduction, the Interest Deduction and the Investment Credit. The Lessee will furnish such documents, records and representations, including but not limited to evidence of the useful life and residual value of the Units sufficient to support the matters claimed in any request for the Ruling, as shall be deemed necessary and appropriate for such request by the Trustee. The Lessee shall join in such request. If the Ruling received by the Trustee and the Owner requires the cost of any Additional Expenditures made by the Lessee to be included in the gross income of the Trustee or the Owner, the Trustee shall, upon request and at the expense of the Lessee, seek a modification of the aforementioned requirement.

20.7. Survival. The Lessee's and the Trustee's agreements to pay any sums which may become payable pursuant to this § 20 shall survive the expiration or other termination of this Lease.

#### § 21. NOTICES

Any document or notice required or permitted to be given to either party hereto shall be deemed to have been given when delivered or mailed, first class, postage prepaid, addressed as follows:

(a) if to the Trustee, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department;

(b) if to the Lessee, at Checkerboard Square, St. Louis, Missouri 63188, attention of Robert W. Lockwood;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to the Agent at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department.

#### § 22. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability shall not invalidate or render unenforceable such provision in any other jurisdiction.

#### § 23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, this Lease exclusively and completely states the rights of the Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall

be valid unless in writing and signed by duly authorized officers for the Trustee and the Lessee.

#### § 24. THIRD-PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto other than the Owner, the Agent, the Investors, the Builder and the permitted successors and assigns of such parties, and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party, except as aforesaid.

#### § 25. EXECUTION

This Lease may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent pursuant to the Lease Assignment shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

#### § 26. GOVERNING LAW

This Lease shall be governed by and construed in accordance with the laws of the State of Missouri; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

#### § 27. NO RECOURSE; IMMUNITIES

27.1. No Recourse. No recourse shall be had in respect of any obligation due under this Lease or referred to herein against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or of the Owner, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever

released as a condition of and as consideration for the execution of this Lease.

27.2. Immunities. Each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or the Owner on account of any representation, warranty or agreement herein of the Trustee (except in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee making claim hereunder may look to said Trust Estate for satisfaction of the same.

#### § 28. AGREEMENTS FOR BENEFIT OF TRUSTEE'S ASSIGNS

All rights of the Trustee hereunder (including but not limited to its rights under §§ 6, 7, 9, 12, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Trustee and any of the Trustee's assigns (including the Agent).

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee,

by

\_\_\_\_\_  
Assistant Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer

RALSTON PURINA COMPANY,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

STATE OF MARYLAND,)  
                                   ) ss.:  
 CITY OF BALTIMORE,)

On this            day of December 1979, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MISSOURI,)  
                                   ) ss.:  
 COUNTY OF                    ,)

On this            day of December 1979, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is            of RALSTON PURINA COMPANY, a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

---

Notary Public

[Notarial Seal]

My Commission expires

APPENDIX A TO LEASE

Units of Railroad Equipment

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifi- cations</u>	<u>Builder's Plants</u>	<u>Quantity</u>	<u>Lessee's Identification Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Delivery</u>
100 4750 cubic foot truck gravity discharge covered hopper cars	LO	as set forth in Purchase Order	Oklahoma City, Oklahoma; Longview, Texas	50	PLMX 11186- PLMX 11235	\$44,695	\$2,234,750	December 1979, F.O.B. point of manu- facture



## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
1	108.7850	41	102.1268
2	108.9254	42	101.9927
3	109.0671	43	101.8431
4	109.2102	44	101.6922
5	109.3283	45	101.5399
6	109.4475	46	101.3720
7	109.5416	47	101.2026
8	109.6366	48	101.0316
9	109.7325	49	100.8448
10	109.8031	50	100.6564
11	109.8743	51	100.4662
12	109.9463	52	100.2744
13	109.9926	53	100.0701
14	110.0395	54	99.8641
15	110.0868	55	99.6455
16	110.1346	56	99.4250
17	110.1615	57	99.2025
18	110.1887	58	98.9673
19	110.1949	59	98.7301
20	110.2012	60	98.4906
21	110.2076	61	91.5784
22	110.1927	62	91.3239
23	110.1778	63	91.0671
24	110.1627	64	90.8079
25	110.1263	65	90.5396
26	110.0895	66	90.2688
27	110.0524	67	89.9887
28	110.0151	68	89.7060
29	109.9596	69	89.4205
30	109.9036	70	89.1254
31	109.8292	71	88.8275
32	109.7543	72	88.5268
33	109.6787	73	88.2163
34	109.5845	74	87.9028
35	109.4895	75	87.5863
36	109.3938	76	87.2668
37	102.6093	77	86.9413
38	102.4937	78	86.6126
39	102.3772	79	86.2778
40	102.2597	80	85.9392

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>	<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
81	85.5968	121	61.5709
82	85.2475	122	61.0547
83	84.8943	123	60.5319
84	84.5371	124	60.0023
85	77.5030	125	59.4780
86	77.1348	126	58.9463
87	76.7625	127	58.4193
88	76.3860	128	57.8850
89	76.0062	129	57.3432
90	75.6221	130	56.8060
91	75.2341	131	56.2614
92	74.8411	132	55.7093
93	74.4433	133	55.1616
94	74.0413	134	54.6063
95	73.6343	135	54.0435
96	73.2222	136	53.4731
97	72.8059	137	52.9106
98	72.3845	138	52.3400
99	71.9578	139	51.7770
100	71.5260	140	51.2060
101	71.0933	141	50.6269
102	70.6554	142	50.0553
103	70.2168	143	49.4756
104	69.7721	144	48.8877
105	69.3215	145	48.3072
106	68.8695	146	47.7185
107	68.4114	147	47.1215
108	67.9472	148	46.5162
109	67.4814	149	45.9205
110	67.0094	150	45.3165
111	66.5311	151	44.7221
112	66.0466	152	44.1194
113	65.5640	153	43.5083
114	65.0750	154	42.9066
115	64.5879	155	42.2963
116	64.0944	156	41.6773
117	63.5945	157	41.0677
118	63.0963	158	40.4495
119	62.5916	159	39.8225
120	62.0804	160	39.1867

## APPENDIX B TO LEASE

Casualty Values

<u>Casualty Payment Dates</u>	<u>Percentage of Purchase Price</u>
161	38.5612
162	37.9270
163	37.3030
164	36.6703
165	36.0287
166	35.3974
167	34.7572
168	34.1081
169	33.4691
170	32.8211
171	32.1638
172	31.4973
173	30.8418
174	30.1771
175	29.5235
176	28.8606
177	28.1883
178	27.5271
179	26.8566
180	26.1766

ANNEX D  
to  
Conditional Sale Agreement

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[CS&M Ref. 5566-001]

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of December 1, 1979

between

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,  
not in its individual capacity but solely  
as Trustee under a Trust Agreement  
dated as of the date hereof with  
International Paper Leasing Corporation,

and

ST. LOUIS UNION TRUST COMPANY,  
as Agent.

---

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 1, 1979, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, acting not in its individual capacity but solely as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with INTERNATIONAL PAPER LEASING CORPORATION, a Delaware corporation ("Owner"), and ST. LOUIS UNION TRUST COMPANY, a Missouri corporation, as agent ("Agent") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

The Trustee is entering into a Conditional Sale Agreement dated as of the date hereof ("CSA") with TRINITY INDUSTRIES, INC. ("Builder"), providing for the conditional sale to the Trustee of such units of railroad equipment ("Units") described in Annex B to the CSA as are delivered to and accepted by the Trustee and settled for thereunder.

The Trustee and RALSTON PURINA COMPANY ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the leasing by the Trustee to the Lessee of the Units.

The Trustee will assign certain of its rights under the Lease to the Agent in order to secure the obligations of the Trustee under the CSA and as an inducement to the Investors (as defined in the Participation Agreement) to invest in the CSA Indebtedness (as defined in the CSA).

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. The Trustee hereby transfers and assigns to the Agent, as collateral security for the payment and performance of the obligations of the Trustee under the CSA, all the Trustee's right, title and interest, powers, privileges and other benefits under the Lease (except any amounts of indemnity payable to the Trustee in its individual capacity), including without limitation the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Trustee from the Lessee under or pursuant to the provisions of the Lease, whether as rent, casualty payment, indemnity (except sums payable to the Trustee or the Owner pursuant to §§ 6, 9 and 20 of the Lease), liquidated

damages or otherwise (such moneys called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to do any and all other things whatsoever which the Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Trustee hereby irrevocably authorizes and empowers the Agent in its own name or in the name of its nominee or in the name of the Trustee or as its attorney to demand, sue for, collect and receive any and all Payments to which the Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee pursuant to the Lease for the account of the Trustee. To the extent received, the Agent will apply such Payments in accordance with Paragraph 10 of the Participation Agreement to satisfy the obligations of the Trustee under the CSA and, so long as no event of default under the CSA or event which with notice or lapse of time or both would constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Trustee on the same date such Payment is applied to satisfy such obligations of the Trustee, by check mailed to the Trustee on such date or, upon written request of the Trustee, by bank wire to the Trustee at such address as may be specified to the Agent in writing, and such balance shall be retained by the Trustee. If the Agent shall not receive any rental payment under § 3.1 of the Lease when due, the Agent shall notify the Trustee at the address set forth in the Lease; provided, however, that the failure of the Agent to so notify the Trustee shall not affect the rights of the Agent or the obligations of the Trustee hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to or transfer or in any way affect or modify the liability of the Trustee under the Lease. Notwithstanding this Assignment or any subsequent assignment, all obligations of the Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against and only against the Trustee or persons other than the Agent.

3. The Trustee will faithfully perform each obligation, covenant and agreement which the Lease provides is to be performed by the Trustee and, without the written

consent of the Agent, will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee (including without limitation the obligation to pay the rents in the manner and at the time and place specified therein), or enter into any agreement amending, modifying or terminating the Lease. Any amendment, modification or termination of the Lease without the Agent's consent shall be void.

4. The Trustee hereby constitutes the Agent its true and lawful attorney, irrevocably, with full power (in the name of the Trustee or otherwise) to demand and receive any and all Payments due and to become due under or arising out of the Lease to which the Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent may deem to be necessary or advisable.

5. Upon the full discharge and satisfaction of all the obligations of the Trustee under the CSA, this Assignment and all rights herein assigned to the Agent shall terminate, and all right, title and interest of the Agent in and to the Lease shall revert to the Trustee without further action on the part of the Agent, except that the Agent, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, an appropriate instrument transferring such right, title and interest to the Trustee. Promptly following such full discharge and satisfaction, the Agent will advise the Lessee in writing that all sums due from the Trustee under the CSA have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Agent.

6. The Trustee will pay and discharge any and all claims, liens, charges, security interests or other encumbrances (other than those created by the CSA) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Trustee or the Owner or their successors and assigns (other than the Agent) not arising out of the transactions contemplated by the CSA or the Lease (but including tax liens arising out of the receipt of the rentals and the other payments under

the Lease and any other proceeds from the Units) unless the Trustee or the Owner shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Agent, adversely affect the interest of the Agent hereunder.

7. The Trustee will from time to time execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interest of the Agent hereunder.

8. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including without limitation the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder. The Agent will give written notice to the Trustee and the Lessee of any such assignment.

9. This Assignment shall be governed by and construed in accordance with the laws of the State of Missouri, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Trustee shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or mailed to the Agent at its address set forth in Article 21 of the CSA or at such other address as the Agent shall designate.

11. So long as no event of default under the CSA has occurred and is continuing, the Agent will not exercise or seek to exercise any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Trustee to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and the Trustee may exercise or seek to exercise its rights, powers, privileges and remedies arising out of § 13.1(a) of the Lease; provided, however, that the Trustee shall not terminate the Lease or otherwise exercise or seek to exercise any rights, powers, privileges and remedies arising out of § 13.1(b) of the Lease without the prior written consent of the Agent.



12. Notwithstanding anything contained herein to the contrary, each representation, warranty and agreement herein made on the part of the financial institution acting as Trustee hereunder is made and intended not as a personal representation, warranty or agreement by said institution or for the purpose or with the intention of binding said institution personally but is made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement) and this Agreement is executed and delivered by said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution on account of any representation, warranty or agreement herein of the Trustee (except in the case of gross negligence or wilful misconduct), either expressed or implied, all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; provided, however, that the Agent or any person claiming by, through or under the Agent making claim hereunder may look to said Trust Estate for satisfaction of the same.

13. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first above written.

MERCANTILE-SAFE DEPOSIT AND TRUST  
COMPANY, not in its individual  
capacity but solely as Trustee,

by

\_\_\_\_\_  
Assistant Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Corporate Trust Officer

ST. LOUIS UNION TRUST COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

STATE OF MARYLAND, )  
 ) ss.:  
CITY OF BALTIMORE, )

On this                    day of December 1979, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF MISSOURI, )  
 ) ss.:  
COUNTY OF , )

On this                      day of December 1979, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is                      of ST. LOUIS UNION TRUST COMPANY, a Missouri corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

[Notarial Seal]

My Commission expires

## CONSENT AND AGREEMENT

RALSTON PURINA COMPANY, a Missouri corporation ("Lessee"), the lessee named in the Lease of Railroad Equipment ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby acknowledges receipt of a copy of the Lease Assignment and consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all Payments (as defined in the Lease Assignment) payable under the Lease directly to ST. LOUIS UNION TRUST COMPANY, as agent ("Agent"), the assignee named in the Lease Assignment, at 510 Locust Street, St. Louis, Missouri 63101, attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent);

(2) the Agent shall be entitled to the benefits of and to receive and enforce performance of all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Trustee; and the Agent shall not by virtue of the Lease Assignment be or become subject to any liability or obligation under the Lease or otherwise; and

(3) without the prior written consent of the Agent, the Lease shall not be terminated or modified nor shall any action be taken or omitted by the Lessee which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

RALSTON PURINA COMPANY,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary